IN THE MATTER OF THE DENTAL DISCIPLINES ACT,1997 and a FORMAL COMPLAINT dated September 17, 2014 regarding Dr. Maged Etman, formerly of Saskatchewan, and whose current place of residence is unknown, RAISING PROFESSIONAL ISSUES

BETWEEN:

The College of Dental Surgeons of Saskatchewan

- and -

Dr. Maged Etman

DECISION OF HEARING PANEL OF THE DISCIPLINE COMMITTEE
ON THE SUBSTANTIVE ISSUES

THE DISCIPLINE COMMITTEE HEARING PANEL:

Ms. Francine Chad Smith, Q.C., Chair of the Hearing
Dr. Hilary Stevens, Discipline Committee Chair
Dr. Raj Bhargava, Member of the College
Dr. Alan Heinrichs, Member of the College
Ms. Margaret Wheaton, Appointee to the College Council

APPEARANCES:	For the Professional Conduct Committee:	Mr. Reynold Robertson, Q.C Ms. Kelsey Burke
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	Dr. Maged Etman did not appear; nor was he represented by Counsel at the hearing	
DATE OF HEARING:	February 4, 5 and 6, 2015	
DATE OF DECISION:	June 22, 2015	

Contents

INTRODUCTION:

[1] Pursuant to a Formal Complaint dated September 17, 2014, Dr. Etman was charged with three counts of professional incompetence in relation to three patients, and with one count of failing to co-operate with the Professional Conduct Committee of the College of Dental Surgeons of Saskatchewan. The hearing of these complaints before the Hearing Panel of the Discipline Committee was conducted on February 4 and 5, 2015 in Saskatoon, Saskatchewan without Dr. Etman attending or being represented by Counsel.

[2] A plea of not guilty to the counts in the Formal Complaint was entered on Dr. Etman's behalf for the record. The administrative record of the Hearing Panel of the Discipline Committee reflects Dr. Etman did not attend or contact the Chair of the Hearing Panel, or Counsel for the Professional Conduct Committee, or the College of Dental Surgeons following the service upon him by email of the initial Notice of Hearing to commence the formal discipline process, or with respect to the subsequent letter, also served by email, containing the particulars of the hearing itself.

[3] On June 26, 2014 the College of Dental Surgeons secured an Order for Substitutional Service through email upon Dr. Etman pertaining to the Formal Complaint, as well as any future documents in the proceedings. Accordingly, all documents leading to the hearing of the Formal Complaint, including the particulars of the hearing and the disclosure of evidence, were served in accordance with that Order. Proof of that service is contained in the Affidavits of Marion LaFreniere and Kelsey Burke which were filed with the Hearing Panel.

[4] *Viva voce* evidence from Dr. Bernie White, Registrar of the College of Physicians and Surgeons, was received. The balance of the evidence received was comprised of the Affidavits of the three complainants, dental records and accounts, receipts and cancelled cheques, and medical reports of dental practitioners.

[5] A Court Reporter was present at the hearing to record the evidence. [redacted], one of the complainants, was also in attendance for most of the first day of the hearing.

[6] Following the evidence, Mr. Robertson, Q.C., Counsel for the Professional Conduct Committee, provided a summation to the Hearing panel. He requested the Hearing Panel make a determination on the merits of the complaints and in the event they are established, that a separate hearing be scheduled to address the issue of penalty.

THE FORMAL COMPLAINT:

[7] The Formal Complaint alleges that between September 18, 2007 and October 25, 2012 Dr. Etman failed to provide competent dental prosthetic services including crowns, bridges, dental implants, and dental implant supported prostheses, post-treatment services, instructions and records for [redacted], [redacted] and [redacted] contrary to *The Dental Disciplines Act, 1997*, sections 26(a) and 26(b); the College Bylaws: Code of Ethics, Responsibilities to Patients, articles 2, 3, 7 and 12; and the College Bylaws, articles 9.2(1)(f) and 9.3(l).

[8] The Complaint also alleges that between October 25, 2012 and June 26, 2014 Dr. Etman failed, without reasonable explanation, to co-operate with the College and the Professional Conduct Committee in the process of the College and the Professional Conduct Committee addressing and investigating concerns and complaints from his patients, contrary to *The Dental Disciplines Act, 1997*, section 27(a), (b), (c) and (d).

THE FACTS:

[9] Dr. Maged Etman was granted a conditional licence to practice dentistry in relation to his engagement as a Faculty Member at the University of Saskatchewan's College of Dentistry to teach Prosthodontics. The conditional licence permitted him to supervise students practicing dentistry on the University Campus in relation to his teaching duties and to engage in private practice in the Private Consulting and Practising Unit of the University Dental Clinic. At the time Dr. Etman had international dental qualifications but had not passed the Canadian examinations which would have allowed him to be fully licenced. The conditional licence was for a term of three years and was subject to him passing the Royal College specialty examinations within the three years. The three year period was extended to five years. However, Dr. Etman failed to meet the condition. Accordingly on October 25, 2012 the College sent a letter advising his conditional licence had expired, he was no longer able to practice dentistry in Saskatchewan, and he was asked to make follow-up arrangements for his patients.

[10] In January 2013 the College began to receive inquiries and complaints from Dr. Etman's patients. Following investigations, the Formal Complaint dated September 17, 2014 was filed.

[11] The recounting of the facts hereafter is divided into two parts. Part I will address the dental services provided to the three complainants, the deficiencies of those treatments and other more general deficiencies relating to the treatments of the three complainants. Part II will address the interaction between Dr. Etman and the Professional Conduct Committee, and the College of Dental Surgeons.

The Dental Treatments in Issue:

[12] [redacted] had extensive prosthodontic and surgical work done by Dr. Etman for which [redacted] paid $21,235.00 in fees. [redacted] had been referred to Dr. Etman by [redacted] dentist, Dr. D. Hastings, for investigation into having an upper denture secured by dental implants constructed. Treatment occurred between May 2009 and September 2012. By January 2013 [redacted] was continuing to experience discomfort. [redacted] spoke with Dr. Etman and was advised he would fix everything, but could not do so for a while. In the interim Dr. Etman told [redacted] he could see Dr. Chris Haunsperger regarding the discomfort.

[13] [redacted] had initially consulted Dr. Etman regarding restoration of his toothless upper jaw (endentulous maxilla). In summary, the end result of Dr. Etman's services for the maxilla was to leave [redacted] with an implant retained upper denture that was loose and uncomfortable. That prosthetic appliance proved unsatisfactory from [redacted] perspective, and clinically unacceptable in the opinion of both Dr. Haunsperger and Dr. Hohn.

[14] Dr. Etman also provided prosthodontic services relating to [redacted] lower jaw (mandible). The end result of those services left [redacted] as of the Fall of 2012 unable to wear [redacted] lower partial plate. The treatment proved unsatisfactory from [redacted] perspective, and clinically unacceptable in the opinion of Drs. Haunsperger, Hohn and Torresyap.

[15] Another problem identified in Dr. Garnet Pakota's report dated June 21, 2013 was the sinus wall at the 13/14 site and at the 23/24 site was punctured by Dr. Etman upon implant placement.

[16] The specific services provided by Dr. Etman and some of the record deficiencies related to those services are contained in the following table:

date	service	location	chart
June 29/09	Bone graft Implants	1st quadrant #14 and #12 sites	
June 5/09	Recommendation for complete upper denture retained by 4 implants. Cost $10,000 to $12,000.		
June 13/09	Surgery date booked to commence treatment.		No consent letter, no treatment options letter, and no written estimate
July 27/09	New complete upper denture delivered		
Aug.15/09	Bone graft Sinus lift	#23 area #25/26 area	

	Bone graft	#25/26 area	Stickers show implants for #23 and #25 areas, but no indication of implant placements in those sites in chart (We assume they were placed)
Feb 16/10	2nd stage surgery #14 and #25		- 2nd stage surgery around implants placed at sites #12, #23, and #25 to expose implants and healing caps placement in preparation for new implant/bar retained upper denture -Chart says Dr. Etman planned to reline upper plate after exposure of implants, but this was not done
June 15/10	Address new problem	2nd quadrant	Chart has no diagnosis of problem but shows bone graft and antibiotics prescribed. Chart does not state whether problem at the #23 or #25 site
June 18/10	Removed posterior implant, placed bone graft and placed new implant		
		2nd quadrant	Chart does not state, but assume #25 implant removed and replaced
June 22/11	Temporary liner upper denture replaced Extractions New implants	 #31, 41, and 42 #31 and 42	
Aug. 30/11	Tied in new upper plate with fixed bar holding implants together		
Dec. 1/11	Implant removed	#12	Results in only three implants (#14, 23 and 25) securing plate, but this is not noted in chart, nor is any solution noted
Jan. 5/12	Top bar inserted and new bar-retained complete upper plate delivered		
Mar. 5/12	Crowns placed.	#31 and *41*	Chart says #41; should be #42 site
Sept 10/12	Extraction Implant Old lower plate adapted	#44 #44	Chart indicated a new partial plate was to be made for new #44 implant

[17] Dr. Etman did not perform a complete analysis of [redacted] oral health and status; nor did he prepare a comprehensive treatment plan - including options, expected results and costs, for delivery in writing to [redacted]. As a result of these failures, Dr. Etman was scrambling throughout the course of treatment to troubleshoot and react to developments rather than follow a well thought out and properly engineered plan to meet the patient's prosthodontic needs. In addition to the result that all services provided to [redacted] had to be removed and re-done, [redacted] had been left to suffer unnecessarily with ongoing dental problems during the reconstruction process.

[18] Following [redacted] complaint to the College of Dental Surgeons, a number of reports were obtained in relation to the dental treatment provided by Dr. Etman and future treatment requirements. Those reports are

discussed below. It should be noted that although the specific observations contained in each report are comprised mainly of the language used in the reports themselves, they are not reproduced as direct quotes. The reason is that there has been some editing for ease of reading, and some additional remarks made that are contained in square brackets regarding the meaning or effect of observations contained in the reports. Such additional remarks represent the consensus of the three dentists who are members of the hearing panel.

Dr. Frank Hohn Report

[19] On January 11, 2015, Dr. Frank Hohn, an oral and maxillofacial surgeon provided a report. He had examined [redacted] on August 7, 2013. He noted the following problems with the treatment by Dr. Etman:

Maxilla:

1) [redacted] presented with "a myriad of implants efforts in the both the maxilla and mandible";
2) At the time [redacted] had three implants in the maxilla [14, 23 and 25]; while there was evidence of a fourth implant, it had been removed;
3) A bar was secured to the remaining three fixtures [implants];
4) The most posterior implant in the upper left demonstrated radiographic failure and was really only being maintained by the bar;
5) [redacted] had significant "Combination syndrome" as the result of retained lower dentition and long standing edentulism in the maxilla. This resulted in [redacted] having very little bone in the anterior maxilla and although the dentoalveolar bulk appears superior posteriorly in the maxilla, "the bone is completely pneumatised, with no ability [structural foundation] to place fixtures [implants]." [This means the lack of bony structure to support the implants required more specific planning than was done.];
6) The maxillary right posterior fixture [implant] appeared to be in the sinus and had several threads exposed;
7) The under engineering of the maxillary arch is more blatant than that of the mandibular arch;
8) Dr. Etman, being a restorative dentist, "has very little ability [training] to undertake bone grafting" and [Dr. Hohn] expects he had very little experience in bone grafting. Dr. Hohn understood several bone grafts were done in conjunction with the implants, but notes "clearly there is insufficient bone present in the anterior maxilla, secondary to the long standing edentulism, to reasonably support an implant-supported prosthesis;
9) The placement of the implants where bone existed or where some type of artificial bone graft was undertaken is too much for four implants in relatively soft bone with minimal volume in a [redacted] year old patient to support the fixed prosthesis the patient requested;
10) The maxillary attempt was doomed from the outset.

Mandible:

1) There was a buried implant [44 site] in the lower right quadrant, which appeared integrated;
2) It did not appear as if there had been any reasonable long term plan established. Overall the planning was poor, with no forethought given to the eventual long-term reconstruction;

3) The implants [at sites 42 and 31] were placed where bone existed, and even with successful implants, the patient was left with four remaining anterior teeth – all with poor crown to root ratios, which were doomed to failure in the long term. [The result would be [redacted] once again considering implant reconstruction to support some type of new removable or fixed prosthesis when the remaining anterior teeth (#43, #32, #33, #34) failed. That new prosthesis would have to address the sites of the failed teeth and be integrated to also address the implants provided by Dr. Etman.]

Dr. Garnet Pakota Report

[20] Dr. Pakota is an Oral and Maxillofacial Radiologist. He prepared a report on [redacted] based upon imaging on June 21, 2013. He makes the following comments on the treatments provided by Dr. Etman:

Maxilla:

1) The apical end of the implant on the right side [site 14] extends above the level of the maxilla sinus;
2) A radiopacity with a density of calcified tissue or material is seen around the portion of the implant in the air space of the sinus. This is consistent with either grafted bone or some type of alloplastic graft material [indicating an attempt to address a sinus implant proximity situation];
3) The apical end of the more mesial implant in the left maxilla (site 23) is close to the floor of the left nasal fossa, but no definitive abnormalities associated with this implant are observed [reflecting minimal acceptable standard];
4) The more distal maxillary left implant [site 25] originally placed into the bone is surrounded by a narrow radiolucent band [indicating possible implant failure];
5) The distal surface of this implant is in very close proximity to the mesial (anterior) wall of the maxilla sinus, and has very likely perforated this wall;
6) A radiopacity is seen lining the inner margin of the sinus immediately distal to the implant. The radiopacity has a slightly heterogeneous internal density and appears to be composed of the same or similar material as the graft described above for the right maxillary implant [again indicating an attempt to deal with a sinus proximity situation];
7) There is an implant attachment on the metal bar in approximately the right canine-lateral incisor area [site 12] but no implant is evident in the alveolar ridge.

Mandible:

1) There is moderate to advanced atrophy of the residual alveolar ridge in the edentulous segments of the mandible, including the sites where implants were placed [indicating a lack of bone where implants were chosen to be placed, and bone grafting should have been done prior to the implant placements];
2) Three implants at sites 31, 42 and 44 are within bone; however, the implant mesial to tooth #32 [site 31] is located virtually at the mandibular midline, and its apical end is immediately above the lingual canal/foramen,

and extends slightly into the superior aspect of the canal [indicating an infringement onto the underlying nerve with serious possible consequences. This also indicates a lack of bone where implant at site 31 was chosen to be placed];

Dr. Chris Haunsperger Report

[21] Dr. Haunsperger's report is dated January 5, 2015. He had received a call in December 2012 from Dr. Etman asking if he would cover any emergency situations for his patients while he was away from his practice. [redacted] attended at his office on January 8, 2013 for an emergency visit. [redacted] was in considerable discomfort because [redacted] lower plate was digging into the gum at the #44 area. In September 2012 Dr. Etman had removed the #44 tooth and immediately placed an implant there.

[22] Dr. Haunsperger ground back the partial denture and relined the plate. He instructed [redacted] that [redacted] should see Dr. Etman in a month to reline the plate. [redacted] replied that [redacted] was not sure when Dr. Etman would be returning to his practice, nor did the staff at the dental clinic know.

[23] [redacted] was next seen by Dr. Haunsperger October 31, 2013 for a complete examination and assessment. Dr. Haunsperger made the following observations in his report:

Maxillary Arch:

1) The existing implant bar was designed to be supported by 4 implants; however the implant at site 13 had already failed and been removed [elsewhere in the decision this area has been referred to as site 12; sometimes the precise site location is difficult to determine but we are satisfied this is the same failed implant];
2) The abutment screw that was to secure the bar to implant at site 23 was absent;
3) There is a halo of radiolucency surrounding the implant at site 25, which is likely indicative of loss of osseointegration around the fixture [implant] [and eventual failure of this implant];
4) The failures at sites 13* and 25 might have been as a result of insufficient bone to begin with. Dr. Haunsperger could not tell whether a volumetric cone beam CT had been performed to determine the sufficiency of bone to place the implants. He noted the occlusal load on the short implants in poor quality, insufficient bone may have been excessive [and a cause of failure of the implants] [* see square bracket comment at 1) above];
5) The occlusal plane of the upper denture teeth are not parallel to the alar-tragus Fox plane resulting in the appearance of the patient's upper [posterior] teeth hanging down when smiling [an error a Prosthodontist would never make];
6) Dr. Haunsperger's conclusion was there was nothing of the upper reconstruction that could be salvaged. The only practical and prudent option is to remove the remaining questionably integrated implants, make a

new conventional complete upper denture, and possibly attempt placement of four new implants and a new bar supported overdenture if there is sufficient bone to allow for placement of implants in the maxilla.

Mandibular Arch:

1) Dr. Haunsperger's overall impression was there was a lack of long term planning and a failure to see the "big picture";
2) Given the condition of [redacted] lower arch [only seven remaining teeth, with 2-3 of them being loose enough to require extraction soon, and the remaining 4 teeth exhibiting moderate horizontal bone loss with 3-5 mm of recession], Dr. Haunsperger believed the treatment plan that would have served the patient's interests in the long term would have been the removal of all the remaining teeth, and placement of 3-5 good long implants into the inter-foraminal region of the mandible to support some form of full arch reconstruction;
3) The implant at #44 is short and of minimal benefit for support of any lower prosthesis;
4) There is significant crestal bone loss around the fixtures at the #42 and #31 sites.

[24] In conjunction with Dr. Frank Hohn, Dr. Haunsperger proceeded to treat [redacted]. The treatment of the maxilla involved the removal of the upper 3 implants and bar and making a conventional upper denture. Regarding the mandible, all remaining teeth and the three implants were removed; three new implants were placed and an implant support bar with complete removable overdenture was made. In essence Dr. Haunsperger removed all the prosthodontic prosthesis and dental implants Dr. Etman placed, and provided [redacted] with prosthodontic treatment suitable to [redacted] dental condition and [redacted] wishes.

[25] The cost of treatment by Dr. Haunsperger's office was $14,690.40. The cost of treatment by Dr. Hohn was $8,163.00.

[26] [redacted] Affidavit confirms [redacted] was suffering from sufficient discomfort in January 2013 that [redacted] consulted with Dr. Haunsperger. It states that after paying in excess of $21,000 to Dr. Etman [redacted] did not received the permanent dental solution [redacted] desired. Lastly, the Affidavit stated upon receiving the news from Dr. Haunsperger that the all the work done by Dr. Etman would have to be redone, [redacted] was upset.

[redacted]

[27] [redacted] was initially referred to Dr. Amundrud by [redacted] dentist Dr. Cheryl Haack. Dr. Amundrud, a periodontist, then referred [redacted] to Dr. Etman. [redacted] was treated by Dr Etman from April 2012 to October 2012. Dr. Etman was to provide an implant supported partial upper denture. At the time [redacted] work involved many public presentations and [redacted] regarded [redacted] appearance and the function of [redacted] mouth to be significant. Accordingly, [redacted] was anxious to press on with dental work. It was not until April 2012 that Dr. Etman provided [redacted] with a verbal

estimate for the work he proposed. Surgery on the maxilla, including bone grafting and placement of two implant fixtures, was done in August 2012. [redacted] found the procedure to be extremely painful, and [redacted] was of the opinion the local freezing was not sufficient. (There was no record in [redacted] dental chart of the amount or type of anesthetic administered.) [redacted] attended the clinic for two subsequent checkups and was unable to contact him after. [redacted] had paid him $6,000.00. Since filing a complaint with the College [redacted] has relocated to British Columbia.

[28] Follow up examination and assessment by Dr. Craig Humber, Oral and Maxillofacial Surgeon reveal the two implants are below the gum, with the one at position 14 having a loose cover screw and the other at position 25 possibly breaching the sinus floor. Dr. Humber also noted [redacted] had significant periodontal disease associated with the anterior portion of [redacted] maxilla, and decreased bony support and mobility associated with teeth #11, #12, #21, #22, #23 and #24.

[29] Dr. T.L. Clarke, a certified Specialist in Prosthodontics, provided an opinion on June 4, 2013 to [redacted] indicating [redacted] dentition as a whole was slowly failing as a result of loss of bone support [from periodontal disease]. It was Dr. Clarke's opinion that [redacted] top teeth had to be removed in order to preserve sufficient bone mass to support a denture. Dr. Clarke noted in that correspondence, '[redacted], you present with a very complex situation that involves more than just the simple replacement of teeth". In a report to Dr. Clarke dated October 8, 2013, Dr. Craig Humber, having been asked about the removal of [redacted] remaining maxillary dentition, agreed with Dr. Clarke's assessment noting, "On examination today I do believe [redacted] is an excellent candidate to have [redacted] remaining maxillary teeth removed."

[30] On January 7, 2014 Dr. Clarke provided another opinion regarding [redacted], which contained the following statements regarding Dr. Etman's treatment:

> My evaluation of the treatment provided by Dr. Etman which entailed the placement of two dental implants appeared to be adequate in terms of integration from the radiographs. However, I could not evaluate their position relative to any prosthetic design and had serious concerns about the proposed treatment plan (as related by the patient) that included retaining the existing maxillary [upper] teeth and utilized a removable partial denture that would be stabilized by the implants provided. . . . I could not recommend this treatment plan to [redacted] as I deemed it would be associated with a guarded to poor prognosis in light of the status of the top teeth and the lack of strategy to address the Class III dental relationship. My recommendations along with information about the recommendations were provided to [redacted] in written format . . . .

[31] In his October 8, 2013 letter, Dr. Humber indicated the two implants (areas #14 and 25) placed by Dr. Etman were insufficient for the proposed implant retained denture. He commented "[after extracting the remaining upper

teeth]" . . . "[w]e could place two more implants and proceed with the second stage on the existing implants at that point in time."

[32] Dr. Pakota's report dated November 4, 2010 confirms there was evidence of horizontal bone loss around the existing upper teeth and confirms the floor of the sinus on the right side was very low. These conditions usually indicate complex bone grafting is required for proper implant placement.

[33] In her Affidavit [redacted] states [redacted] first saw Dr. Etman in October 2010, but it was not until August 2012 that he began his actual treatment by placing two implants. Following a checkup in September 2012, [redacted] was told an October appointment was cancelled. No reason for the cancellation was provided. [redacted] tried to reach Dr. Etman on several occasions thereafter and was told he was off for a few months and would be back in December 2012. In January 2013 [redacted] was advised Dr. Etman would be back on March 1, 2013; however, [redacted] was unable to reach Dr. Etman on that date. Subsequently, [redacted] checked with the College about Dr. Etman and was advised they did not know anything and that his records were locked up. Following consultation with [redacted] dentist, Dr. Haack, [redacted] filed her complaint. In Exhibit B to [redacted] Affidavit [redacted] describes the surgical procedure Dr. Etman performed in August 2012 as "very painful procedure, the worst experience of my life." That Exhibit also comments upon the overall effect of [redacted] treatment from Dr. Etman as follows:

> I have *suffered* both physical and mental injury, emotional trauma and a significant economic loss because of Dr. Etman's surgical work to me. I was a practising agrologist for 35 years until my surgery with Dr. Etman. My practise involved marketing and communications as well as arbitration and negotiations both domestically and internationally. This demanded a superior command of public speaking. I still suffer from a lengthy transition period. I have a significant gag reflex and my diet has needed modification. I lost weight. My speech has changed, I cannot articulate words well anymore. I am now fearful of not being understood. I feel that this has caused me to feel isolated both socially and professionally. When I speak to an audience now they have difficulty following me. I find that it is more difficult to achieve my purpose professionally, no matter how compelling the message or how strong the arguments.

[redacted]

[34] [redacted] went to Dr. Etman's on the recommendation of [redacted] dentist for implant restorations of teeth #12 and #22. Dr. Etman conducted the surgery on March 14, 2009 which included bone grafting and the placement of two implants. Two crowns were subsequently installed that summer. Because the colour was not close to [redacted] natural teeth, [redacted] requested the crowns be remade to better match [redacted] teeth, and the new crowns were installed in February 2010. The metal implant abutments were not changed and as a result [redacted] crowns continued to have a darkened appearance. [redacted] mother paid $8,711.95 for [redacted] treatment.

[35] In early 2013 [redacted] lost one crown. Unable to make an appointment with Dr. Etman, [redacted] was referred to Dr. Haunsperger's office which had agreed to provide emergency coverage for Dr. Etman's patients. [redacted] had lost the permanent crown for the implant at position 22. Dr. Haunsperger supplied a temporary crown. Dr. Haunsperger noted there was a similar implant supported crown at site 12 that may be coming off in the future because he noted a gap between the #12 crown and the underlying custom abutment.

[36] Dr. Haunsperger's report dated January 5, 2015 observes the restorations could have been done better and notes the following deficits in the work provided by Dr. Etman: a screw retained crown would have been preferable to a cemented one according to current peer reviewed publications; a zirconia abutment would have resulted in a more pleasing visual result instead of the metal abutment which shows grey through the tissues; and the fit of the #12 crown to the abutment is unacceptable. Regarding the fit of the #12 crown, a photograph accompanying his report shows a visible gap, which as well as being aesthetically displeasing, presents a pocket for the trapping of debris and bacteria. Dr. Haunsperger's view was that the crowns and abutments would have to be replaced to improve the final esthetic result.

[37] In [redacted] Affidavit [redacted] states Dr. Etman had placed [redacted] new crowns in February 2010, and that later when the crown on the left broke off [redacted] called the University (Dental Clinic) and was told Dr. Etman was away. [redacted] never heard back from Dr. Etman and was eventually referred to Dr. Haunsperger.

OTHER GENERAL TREATMENT DEFICITS REGARDING THE COMPLAINANTS:

Records:

[38] Overall the records for the three complainants were not complete. While there were some errors in the notes regarding the details of treatment, and many omissions, the overriding concern is the failure of the records to contain information to reflect diagnosis of each patient's situation and a complete action plan before proceeding with treatment. This is a significant professional requirement, particularly so when dealing with the very complicated cases presented by [redacted] and [redacted]. The fact such detailed diagnosis and planning was not done is unacceptable and falls well below the standard of care expected from dental practitioners. Furthermore, the records demonstrated Dr. Etman failed to provide the complainants with a written document outlining their treatment options, including the expected result and the estimated costs for each option. An example of the expected standard regarding diagnosis and planning is evident in the treatment records of Dr. Clarke for [redacted]. (See her letter dated June 4, 2013 at Tab 7,H in the [redacted] binder.)

[39] None of the complainants' dental charts contained adequate diagnostic records or treatment plans. These records are fundamental to the informed consent process dentists are required to comply with. While there may be a preferred course of treatment from the dentist's perspective, that treatment may not meet the individual

patient's needs or desires for a number of reasons. Patients are entitled to know all the options, the prognosis for each, including the short term and long term pros and cons of the options, and of course the costs associated with each.

[40] Overall the records for [redacted] were more complete than those for the other two complainants. However, [redacted] records contained a number of inaccuracies as reflected in the chart of treatment above. [redacted] record also reflected that an antibiotic had been prescribed, but failed to identify the antibiotic or include details for its use.

[41] The records for [redacted] failed to contain any information regarding the treatment costs provided to [redacted]. Although the accepted practice is to itemize the costs in writing as Dr. Clark did in his letter dated June 4, 2013. [redacted] did acknowledge Dr. Etman provided [redacted] with a verbal cost estimate. The July 2, 2013 chart entry notes "discussion of treatment"; however, the chart contains no details regarding the treatment or treatment options, nor was there a written detailed treatment plan on the file or having been delivered to [redacted] in keeping with the accepted practice. The chart did not contain a consent regarding the material used in the bone graft, or the details of the graft. Lastly, following the surgery on August 2, 2012, there is no follow-up appointment noted, or any indication of any follow-up.

[42] The initial health questionnaire and the charting of Dr. Etman's examination findings on the odontogram (diagnostic chart) are acceptable. However, notwithstanding references to periapical radiographs being taken and a panoramic radiograph requested, there are no records of the radiographs in the file, or that a panoramic radiograph was received. The diagnostic records are inadequate and there was no record of a treatment plan. Given the lack of adequate diagnostic records and the absence of a treatment plan, the chart fails to provide an adequate basis for proceeding with implant therapy. Furthermore, there was no mention in the chart of the poor angulation of the implants, or of poor marginal integrity of the crowns. Although the chart reflects the crowns were replaced because [redacted] was not happy with the shade, [redacted] remained dissatisfied with the shade of the replaced crowns. Lastly, while notes were made at each visit, some of them were hard to read and decipher.

Post Surgery Instructions

[43] The records also demonstrated that following surgery the patients were not provided with instructions for their healing period. But more importantly was Dr. Etman's failure to contact his patients following the withdrawal of his temporary licence to let them know what was happening and to advise them how to access their records and who to contact should they require treatment. This was vexing for Dr. White who had specifically secured authorization from the Professional Conduct Committee to allow Dr. Etman a short extension of his licence to attend to those matters.

Accessibility of Records:

[44] The evidence of Dr. White was that the patient records for the three complainants were not located in the private dental clinic. They were located throughout Dr. Etman's office, which had been locked and to which clinic staff and members did not have access. Accordingly, it was only by making unusual efforts that Dr. White and the College staff were able to eventually secure access to the complainants' dental records and make them available to the practitioners who evaluated the work performed by Dr. Etman and follow up on corrective measures and or future treatment for them.

Interaction with the Professional Conduct Committee and the College in the Investigation into the Complaints:

[45] A letter of Dr. Brent Dergousoff, Chair of the Professional Conduct Committee, dated July 11, 2014 was sent by email to Dr. Etman. The letter requested Dr. Etman to appear before the Committee in person at the office of the College of Dental Surgeons on Friday, July 18, 2014 at 1:00 pm. The letter stated the purpose of the meeting and referred to section 27(d) of *The Dental Disciplines Act* which specifies failure to comply with the request is professional misconduct. Sent with that correspondence were a copy of the Professional Conduct Committee's Motion to order Dr. Etman to appear, the agenda for the meeting, and a copy of the Order for Substitutional Service.

[46] The letter also made reference to the previous efforts by the Professional Conduct Committee to have Dr. Etman appear before it in November and December of 2013, and his failure to attend on those occasions. Regarding the dates to appear before the Committee in December, Dr. Etman had been given the option of appearing by telephone conference or in person.

[47] Dr. Etman did not respond to the letter of July 11, 2014 and failed to attend before the Professional Conduct Committee on July 18, 2014.

[48] In his Affidavit, Dr. White speaks to receiving complaints regarding Dr. Etman beginning January 28, 2013. The Affidavit also states Dr. White wrote to Dr. Etman on March 13, 2013 requesting documents and patient records. Because the documents and records were not forthcoming, the Council of the College of Dental Surgeons passed a motion on April 17, 2013 authorizing Dr. Etman's records be secured and delivered to the College of Dental Surgeons for the purpose of the investigation of complaints received by the Professional Conduct Committee. Although Dr. Etman met with Dr. White on April 22, 2013, Dr. Etman did not produce the patient charts and documents requested. On May 7, 2013 the Council of the College of Dental Surgeons passed a further motion authorizing persons to seize Dr. Etman's patient records.

[49] Dr. White's Affidavit also notes he last met with Dr. Etman on September 16, 2013, and after that the College has been unable to ascertain his whereabouts, although he has from time to time communicated with the College by email.

ISSUES:

[50] The issues presented by the Formal Complaint and the evidence are:

1. Has the complaint of professional incompetence regarding the prosthodontic treatment provided to the three complainants been established; and
2. Has the complaint of professional misconduct regarding the interaction with the Professional Conduct Committee and the College of Dental Surgeons been established.

DECISION:

[51] We find Dr. Etman guilty of the four counts contained in the Formal Complaint, being three counts of professional incompetence and one count of professional misconduct.

REASONS FOR DECISION:

[52] Initially we wish to comment on the issue of the jurisdiction of the College of Dental Surgeons and its Committees to investigate, charge and discipline a person who has ceased to be licenced by it. This issue was addressed in the case of Dr. Raymond Abouabdallah. Firstly by the Hearing Panel of the Discipline Committee in its decision dated March 2, 2010, by the Court of Queens's Bench, 2010 SKQB 256 (CanLII), 2010-07-20; the Court of Appeal 2011 SKCA 99 (CanLII) — 2011-09-02 2010 SKCA 129 (CanLII), and by the Supreme Court of Canada 2012 CanLII 18864 (SCC) — 2012-04-12 in dismissing Dr. Abouabdallah's motion for leave to appeal without reasons.

[53] Notwithstanding the continuation of the jurisdictional challenge in the Abouabdallah case, in 2010 sections 25.1 and 25.2 were added to the *Dental Disciplines Act* to address the issue. In summary, those sections specifically permit the College to conduct disciplinary proceeding against a former member provided a complaint is placed

before the Professional Conduct Committee for investigation within two years of the date a dentist ceased to be a member.

[54] Secondly, we note the burden of proof on the Professional Conduct Committee is to apply the civil burden of proof, being the balance of probabilities. That is, is it more likely than not that the dentist is guilty of the charges. Although our decision may impact on the ability of the dentist in question to practice dentistry in Saskatchewan and may also have an impact upon his ability to do so in other Canadian jurisdictions, there is only one standard for the civil burden of proof. There are not degrees of that burden or refinements to it. See in *F.H. v. McDougall* [2008] 3 S.C.R. 41. In that judgment, Justice Rothstein concluded at paragraph 49, that in Canada, we have only one standard of proof in civil cases, and it is proof on a balance of probabilities. In describing that standard, Justice Rothstein noted at paragraph 44:

> i. . . . In my view the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred."

[55] Subsequently, Justice Rothstein notes in paragraph 49 that "In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."

Professional Incompetence:

[56] The complaints of professional incompetence all allege Dr. Etman's provision of dental prosthetic services were contrary to specific provisions in the *Dental Disciplines Act, 1997*; The College Bylaws: Code of Ethics, Responsibilities to Patients; and The College Bylaws. The relevant portions of those documents are set out hereinafter.

> *The Dental Disciplines Act, 1997*
>
> Professional misconduct
> 26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, 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.

The College Bylaws: Code of Ethics, Responsibilities to Patients

ARTICLE 2: COMPETENCY

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill, and experience with which they serve their patients and society. All dentists, therefore, must keep their knowledge of dentistry contemporary, and must provide treatment in accordance with currently accepted professional standards.

A practitioner should inform the dental licensing authority when a serious injury, dependency, infection or other condition has either immediately affected, or may affect over time, his or her ability to practice safely and competently.

ARTICLE 3: CONSULTATION AND REFERRAL

Dentists shall provide treatment only when qualified by training or experience; otherwise a consultation and/or referral to an appropriate practitioner is warranted.

ARTICLE 4: EMERGENCIES

A dental emergency exists if professional judgment determines that a person needs immediate attention to relieve pain, or to control infection or bleeding. Dentists have an obligation to consult and to provide treatment in a dental emergency, or if they are unavailable, to make alternative arrangements.

ARTICLE 5: PROVISION OF CARE

A dentist shall remember the duty of service to the patient and therefore is responsible to provide for care to all members of society. A dentist shall not exclude, as patients, members of society on the basis of discrimination which may be contrary to applicable human rights legislation. Other than in an emergency situation, a dentist has the right to refuse to accept an individual as a patient on the basis of personal conflict or time constraint.

ARTICLE 6: DELEGATION OF DUTIES

Dentists must protect the health of the patients by delegating duties or procedures only to those persons qualified by skill, training and licensure.

ARTICLE 7: ARRANGEMENTS FOR ALTERNATIVE CARE

A dentist having undertaken the care of a patient shall not discontinue that care without first having given notice of that intention and shall endeavor to arrange for continuity of care with colleagues.

College Bylaws

Professional Standards of Members
9.2 (1) Each member shall:
. . .
(f) maintain the records that are required by the bylaws to be kept in respect of a member's patients or practice;

Records
9.3 (1) All professional corporations and all regular members, practising life members, and faculty members licensed by the College shall keep full and complete clinical dental records on behalf of themselves and all other dentists and allied dental personnel in their employ or under their supervision, which records shall include as a minimum the following information:

(a) patient identification data;
(b) medical and dental history;
(c) clinical examination findings;
(d) progress, diagnostic and consultation reports;
(e) each treatment prescribed pertaining to the patient;
(f) each treatment rendered to the patient;
(g) each date the patient is seen in the dental office;
(h) all medications given or prescribed to the patient, including the amount, instructions, and date provided or prescribed;
(i) appropriate radiographs and models.

[57] Dr. Etman undertook to provide prosthodontic dental treatments to the three complainants. Even though he was teaching Prosthodontics at the University of Saskatchewan's College of Dentistry, he was not licensed as a specialist in prosthodontics. He was licensed as a general dental practitioner. Nevertheless, once he provides prosthodontic services he is to be held to a reasonable standard of care in relation to such services. See *Ter Neuzen v. Korn* [1995] 3 SCR 674, where Sopinka J. delivering the judgment of the majority stated:

> 33 It is well settled that physicians have a duty to conduct their practice in accordance with the conduct of a prudent and diligent doctor in the same circumstances. In the case of a specialist, such as a gynaecologist and obstetrician, the doctor's behaviour must be assessed in light of the conduct of other ordinary specialists, who possess a reasonable level of knowledge, competence and skill expected of professionals in Canada, in that field. A specialist, such as the respondent, who holds himself out as possessing a special degree of skill and knowledge, must exercise the degree of skill of an average specialist in his field: see *Wilson v. Swanson*, [1956] S.C.R. 804, at p. 817, *Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351, at p. 361, and *McCormick v. Marcotte*, [1972] S.C.R. 18.

[redacted]

[58] Regarding the prosthodontic services Dr. Etman provided to [redacted], we have the medical reports of Dr. Frank Hohn, Dr. Garnet Pakota, Dr. Vincent Torresyap, and Dr. Chris Haunsperger. The details of the deficiencies relating to the prosthodontic treatment provided by Dr. Etman have been outlined under the heading of Facts. The fundamental deficiency in the overall treatment of [redacted] was the failure to assess the weakened condition of the bony support structures of [redacted] jaws with the result the maxilla prosthetic design option had been under-engineered and the support was unable to carry the load. With respect to the mandible there was no apparent overall plan of treatment established. Doctors Hohn and Haunsperger regarded the prosthodontic services as having failed. They recommended complete removal of all prosthodontics implants and appliances provided by Dr. Etman and a more viable treatment option be undertaken. That was in fact carried out. The total cost of the new treatment was $22,853.40. [redacted] received no value whatsoever for the $21,235.00 in fees [redacted] paid to Dr. Etman.

[59] In addition, Dr. Pakota observed the apical end of the implant on the right side placed by Dr. Etman perforated the maxilla sinus floor. While errors such as this may occur from time to time, what brought the perforation into the realm of professional incompetency was his failure to perform an adequate bone graft in conjunction with the implant placement which may have prevented the perforation, his failure to tell [redacted] what had happened, his failure to consult with an oral surgeon regarding the perforation, and his failure to note it in the dental chart. This is an example of how improper diagnosis and planning results in treatment below the acceptable standard. It also indicates Dr. Etman's surgical skills did not meet the acceptable standard.

[60] We have no hesitation in concluding Dr. Etman failed to deliver competent dental prosthetic services to [redacted].

[redacted]:

[61] Regarding Dr. Etman's treatment of [redacted] we have reports by Dr. Humber and Dr. Clarke. Dr. Humber concluded the implants placed were insufficient to support the apparently intended prosthetic device because of the poor condition of [redacted] bony support. Dr. Clarke's report indicated there was no apparent overall plan of treatment to address [redacted] concerns and compromised dentition. It was evident from the reports of Dr. Clarke and Dr. Humber that [redacted] case was a complex one which required considerable investigation, analysis and treatment planning. Based upon the reports of Dr. Humber and Dr. Clarke, and given the dental chart for [redacted], it is apparent that these significant steps were not taken by Dr. Etman prior to commencing his treatment or at any time thereafter. The treatment provided to [redacted] was of limited value and incomplete.

[62] [redacted] paid fees of $6,000.00 to Dr. Etman.

[63] We have no hesitation in concluding Dr. Etman failed to deliver competent dental prosthetic services to [redacted].

[redacted]

[64] Dr. Haunsperger has concluded the two crowns and abutments for them did not meet the acceptable standard. The only way to improve upon the treatment would be to replace the implant abutments and crowns with a more aesthetically acceptable material.

[65] [redacted] mother paid $8,711.95 in fees for the treatment provided by Dr. Etman.

[66] We have no hesitation in concluding Dr. Etman failed to deliver competent dental prosthetic services to [redacted].

Other General Treatment Deficiencies

[67] The Three complainants were not provided with suitable information when Dr. Etman's conditional licence to practice was cancelled. Dr. Etman failed to deliver any notice to them regarding the cessation of his practice; nor did he leave adequate instructions to the dental clinic staff regarding inquiries from his patients. Although Dr. Etman contacted Dr. Haunsperger to request he provide emergency services to his patients, the patients were left without any provision for follow-up treatment.

[68] [redacted] was able to contact Dr. Etman in January 2013; however, in the Fall of 2012 [redacted] had been advised that Dr. Etman was away. When [redacted] and Dr. Etman did speak, Dr. Etman told [redacted] that he would be back March 1 and be able to address any issues at that time. In October of 2012 [redacted] had an appointment cancelled without any reason being provided. [redacted] was also told Dr. Etman would be returning December 1; however, that proved not to be the case. [redacted] attempts to see Dr. Etman after [redacted] crown broke proved futile and eventually [redacted] was referred to Dr. Haunsperger.

[69] The dental records for each of the complainants were inadequate. They failed to record, or failed to record with sufficient detail, the clinical examination findings; progress, diagnostic and consultation reports; each treatment prescribed; each treatment rendered; each date the patient was seen in the dental office; and appropriate radiographs and models. With respect to [redacted], the records also failed to include all medications given or prescribed, including the amount, instructions, and date provided or prescribed.

[70] Lastly, no arrangements were made for the complainants to obtain access to their dental records. The records were not kept in the private dental clinic. Nor were the records made available by Dr. Etman once the College received complaints. It was necessary for the College of Dental Surgeons to secure resolutions from its Council to secure access to the records.

Interaction with the College and the Professional Conduct Committee

[71] The applicable law regarding this matter is section 27 of *The Dental Disciplines Act,* which provides:

> Professional misconduct
> 27 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, 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.

[72] The College of Dental Surgeons first began receiving complaints regarding Dr. Etman on January 28, 2013.

Dr. White, the Registrar of the College, wrote to Dr. Etman on March 13, 2013 requesting documents and patient records relating to the complaints. As the documents and records were not forthcoming, the Council of the College passed a motion on April 17, 2013 that the documents and records be secured and delivered to the College for the purpose of investigating the complaints. Even though Dr. Etman met with Dr. White on April 22, 2013, the documents and records were not produced. It was necessary for the Council to pass a further motion on May 7, 2013 authorizing the documents and records be seized. We find Dr. Etman's refusal to comply with the motion of the Council is misconduct pursuant to section 27(d) of the *Act.* We also find Dr. Etman's failure to deliver the documents and records to the College was misconduct because it was harmful to the best interests of the public, which, in our opinion, also includes members of the public who have made inquiries, or filed a complaint, regarding dental treatment.

[73] In addition to the foregoing, Dr. Etman failed to respond to three requests to appear before the Professional Conduct Committee. The first request was pursuant to a telephone message having been left on November 21, 2013 asking he attend on November 29, 2013. Dr. Etman responded by email declining because of poor health. The second was by a letter addressed to Dr. Etman at his clinic address as shown on the College's records. It provided two alternate dates of December 9 or 20, 2013 for Dr. Etman to appear in person or by telephone conference. No response was received from Dr. Etman. The third request was a directive sent by email dated January 21, 2014, with a letter and an order from the Professional Conduct Committee attached, requiring Dr. Etman to appear on January 31, 2014. This directive was sent to Dr. Etman at two email addresses and by regular mail to his last address of record. Dr. Etman did not appear or respond.

[74] As Dr. White testified, there came a time when the College no longer had an address or phone number for Dr. Etman. To ensure its future proceedings would not be in vain, the College secured an Order for Substitutional Service by email on Dr. Etman from the Court of Queen's Bench. With the Order of Substitutional Service in hand, the Professional Conduct Committee then served Dr. Etman with a fourth request, which was actually an order, to appear before it on July 18, 2014. Dr. Etman did not appear on that date, nor did he contact the College or the Professional Conduct Committee.

[75] It is not clear from the evidence whether or not Dr. Etman had received the communications from the Professional Conduct Committee to appear before it in December of 2013, January 2014 or July 2014. However, based upon his meeting with Dr. White in April 2013 and the fact he knew in November 2013 the Professional Conduct Committee wanted to meet with him, it is reasonable to assume he knew the College was investigating complaints by his patients. It is also reasonable to assume Dr. Etman chose to avoid providing the College with new contact information. That decision to avoid providing his new contact information to the College, whether intentional or not, is in our view misconduct pursuant to section 27(a) and (b) of the Act. Failure to provide current contact information, or otherwise "hiding out", when one is subject to an investigation and possible discipline, is not the responsible conduct expected from members of the dental profession. It is harmful to the interests of the public, including individuals who have made inquiries or filed a complaint in relation to dental treatment by the missing professional. It is harmful to the reputation and good standing of other members of the profession; and it is harmful to the integrity and good standing of the dental profession in general.

[76] We find Dr. Etman's failure to attend before the Professional Conduct Committee on July 18, 2014 is misconduct pursuant to section 27(d) of the *Act.*

[77] The allegations contained in the Formal Complaint regarding incompetence and misconduct have been established.

DATED at Saskatoon, Saskatchewan this 22nd day of June, 2015.

THE COLLEGE OF DENTAL SURGEONS OF SASKATCHEWAN DISCIPLINE COMMITTEE
per:

"Francine Chad Smith"
Francine Chad Smith, Q.C.
Chair of Discipline Hearing Panel

"Hilary Stevens"
Dr. Hilary Stevens
Chair of the Discipline Committee
Member of Discipline Hearing Panel

"Margaret Wheaton"
Ms. Margaret Wheaton
Member of Discipline Hearing Panel
and Lay Member of Council

"Raj Bhargava "
Dr. Raj Bhargava
Member of Discipline Hearing Panel

"Alan Heinrichs"
Dr. Alan Heinrichs
Member of Discipline Hearing Panel