
Notice to DENTISTS

Alberta Dental Association and College Hearing Tribunal Decision Summary November 26, 2020

In Accordance with Bylaw 20(7) of the Alberta Dental Association and College

On October 19, 2018 and June 24, 2020, and because of the two separate decisions of the Alberta Court of Appeal, Dr. Zuk applied for leave to appeal the decisions of the Alberta Court of Appeal to the Supreme Court of Canada. The Supreme Court of Canada denied his applications for leave to appeal and ordered Dr. Zuk to pay costs to the Alberta Dental Association and College on both occasions.

SUMMARY OF PROCEEDINGS

On June 14, 2016, Dr. Michael Yar Zuk, as he was at the time, was found to have engaged in unprofessional conduct by a Hearing Tribunal of the Alberta Dental Association and College in relation to five complaints comprising 21 charges. He was ordered to serve a one year suspension, pay costs of \$175,000, and complete an Ethics Program.

Dr. Zuk appealed the decision of the Hearing Tribunal to an Appeal Panel of Council of the Alberta Dental Association and College (the “Appeal Panel”). On February 14, 2017, the Appeal Panel confirmed the decision of the Hearing Tribunal and also ordered Dr. Zuk to pay additional costs in relation to the appeal, as well as serve the sanctions ordered by the Hearing Tribunal.

In March of 2017, Dr. Zuk appealed the decisions of the Hearing Tribunal and Appeal Panel to the Alberta Court of Appeal. On August 21, 2018 and November 27, 2018, the Alberta Court of Appeal upheld 19 of the 21 findings that Dr. Zuk had engaged in unprofessional conduct. The Court of Appeal found that the costs were generally reasonable

except for Dr. Zuk being required to pay costs associated with the unfounded breach of undertaking. The Court of Appeal referred the matter back to the Appeal Panel for further consideration of sanction and costs because 2 of the 21 findings were overturned. Dr. Zuk was ordered to pay the costs of the Alberta Dental Association and College that they asked for.

On October 19, 2018, Dr. Zuk attempted to appeal the August 21, 2018 decision of the Alberta Court of Appeal to the Supreme Court of Canada by making an application for leave to appeal (permission to appeal). On April 4, 2019, the Supreme Court of Canada dismissed Dr. Zuk’s application for leave to appeal and ordered he pay costs to the Alberta Dental Association and College.

In December of 2018, the Appeal Panel reviewed the decision of the Alberta Court of Appeal for further consideration of sanction and costs. The Appeal Panel amended the sanction that was imposed earlier and ordered Dr. Zuk to serve a 6 month suspension, complete an

Ethics Program, and pay 50 percent of the costs of the Investigation and Hearing before the Hearing Tribunal and the costs of his appeal to the Appeal Panel.

In March of 2019, Dr. Zuk appealed the second decision of the Appeal Panel to the Alberta Court of Appeal. On April 29, 2020, the Alberta Court of Appeal dismissed the appeal as they did not find any extricable error of law, or that the decision on sanction or costs was unreasonable.

On June 24, 2020, Dr. Zuk attempted to appeal the April 29, 2020 decision of the Alberta Court of Appeal to the Supreme Court of Canada by making an application for leave to appeal (permission to appeal). On November 26, 2020, the Supreme Court of Canada dismissed Dr. Zuk's application for leave to appeal and ordered he pay costs to the Alberta Dental Association and College.

DECISION OF THE HEARING TRIBUNAL

Five complaints about Dr. Zuk proceeded to a contested hearing in August of 2015 and April of 2016 in front of a Hearing Tribunal of the ADA&C. On November 23, 2015, the Hearing Tribunal found Dr. Zuk guilty of unprofessional conduct with respect to 21 allegations presented and dismissed 14 allegations as duplications of other allegations not proven.

Many of the allegations involved Dr. Zuk's advertising. There were several allegations against Dr. Zuk that did not specifically involve his advertising.

Specifically in relation to Dr. Zuk's advertising, there were many allegations against Dr. Zuk that did involve his

advertising and promotional practices. The Hearing Tribunal decided that Dr. Zuk was guilty of unprofessional conduct for breaching the Code of Ethics and the Health Professions Act.

In its reasons for finding that Dr. Zuk had engaged in unprofessional conduct in relation to many publications he made, the Hearing Tribunal stated these specific publications by Dr. Zuk:

... represent a clear and forceful attack on the integrity of the ADA&C and its efforts to regulate the profession. ... This was a paid advertisement with a dual purpose: to attack the ADA&C and the alleged conspiracy of orthodontists supported and abetted by the ADA&C and to promote Dr. Zuk and his form of shorter term braces. In the opinion of the Hearing Tribunal, the two purposes are interrelated and serve to advance Dr. Zuk's interests in promoting his practice and in representing himself as a dentist exposing corrupt and biased conduct on the part of the ADA&C for the benefit of the public who may use his services.

The Hearing Tribunal also clarified that the right to free speech does not authorize or permit a professional such as a dentist to put forward such serious allegations presented as matters of fact, when at the hearing, Dr. Zuk was only prepared to say that these statements were opinions that he honestly held.

In reference to braces which are high speed or provide three months treatment, the Hearing Tribunal found these many references to be false or misleading when Dr. Zuk himself stated that these specific treatment times are not accurate as he stated "when in fact it will be all over the place because every situation is different." The Hearing Tribunal also noted Dr. Zuk made many forceful and extravagant claims of a secret, specialized, highly technically advanced and complex level of procedure which most dentists or dental specialists cannot comprehend or accept but is now available to patients (because of Dr. Zuk). These claims were claims of superiority that were not objectively verifiable. They also referenced that Dr. Zuk's statements that he has taken advanced continuing education with the best specialists in the world so he can handle in confidence cases that would otherwise be very difficult were false or misleading.

On June 14, 2016, the Hearing Tribunal ordered Dr. Zuk serve a one year suspension, pay costs of the investigation and hearing of \$175,000.00, and complete the Ethics Program.

DECISION OF THE APPEAL PANEL OF COUNCIL

Dr. Zuk appealed the decision of the Hearing Tribunal to an Appeal Panel. On February 14, 2017, the Appeal Panel agreed with the decision of the Hearing Tribunal as it was reasonable. The Appeal Panel also concluded the decision of the Hearing Tribunal was correct.

The Appeal Panel also stressed that it fully agreed with the decision of the Hearing Tribunal and affirmed that compliance by dentists in Alberta with the Code of Ethics is not optional, it is essential. The Appeal Panel enforced this message, by stating:

Like all Canadians and Albertans, members of the dental profession have the right to free speech. They can express opinions and criticisms and advocate for change including within the profession. However, as professionals in a self-regulated profession, members of the ADA&C have important ethical obligations to the public, other members of the profession and to the ADA&C. Those ethical obligations cannot be ignored or deliberately violated in the name of free speech or political speech. Dentists cannot pick and choose as to which provisions of the Code of Ethics they will respect and follow.

The Appeal Panel found as reasonable the decision of the Hearing Tribunal that Dr. Zuk shall serve a one year suspension, pay \$175,000.00 costs and complete the Ethics Program. In addition to this, the Appeal Panel decided that Dr. Zuk should also pay 66 percent of the costs, expenses and fees of the Appeal Panel which will be determined.

DECISION OF THE COURT OF APPEAL

Dr. Zuk appealed the decision of the Appeal Panel to the Alberta Court of Appeal. In their August 21, 2018 and November 27, 2018 decisions, the Court of Appeal upheld 19 of the 21 findings of unprofessional conduct. It allowed the appeal in part and referred the matter back to the Appeal Panel for further consideration of sanction and costs.

The Court of Appeal reviewed the evidence before the Appeal Panel and the Hearing Tribunal and found that the findings of unprofessional conduct for the breach of an undertaking were unreasonable as was the Hearing Tribunal's assessment of the gravity of Dr. Zuk's failure to cooperate with an investigator. The matter was referred back to the Appeal Panel for consideration of sanction and costs, having regard to the Court of Appeal's reasons.

The Court of Appeal felt that although the decision on sanction was generally reasonable, it was unreasonable in two respects. The Court of Appeal further found that the decision on costs was generally reasonable, however, it was unreasonable to the extent that Dr. Zuk was required to pay costs associated with the breach of undertaking and the Hearing Tribunal's assessment of the gravity of Dr. Zuk's failure to cooperate with the investigator.

DECISION OF THE APPEAL PANEL

The Appeal Panel sat on December 7, 2018 to review the sanction decision as per the directions set by the Court of Appeal because they were ordered to further consider the sanction and costs in light of their conclusions about the breach of undertaking and the gravity of Dr. Zuk's failure to cooperate with the Complaints Director.

In their March 5, 2019 decision, the Appeal Panel determined that given that two significant findings of unprofessional conduct were no longer to be part of the consideration of sanctions, the sanction imposed on Dr. Zuk could no longer be justified. The Appeal Panel reduced Dr. Zuk's suspension from 12 months to 6 months as the shorter term better reflected the fact that the two findings were overturned and were no longer part of the consideration of sanction.

The Appeal Panel further determined that the amount of costs to be payable by Dr. Zuk would be reduced by 50% to account for the two findings that were overturned by the Court of Appeal.

DECISION OF THE COURT OF APPEAL

Dr. Zuk appealed the decision of the Appeal Panel to the Alberta Court of Appeal on the grounds that the same Panel of Council should not have heard the previous appeal as they were permanently invested in their earlier reasons and that created unfairness towards him.

In their April 29, 2020 decision, the Alberta Court of Appeal reviewed the findings of the March 5, 2019 decision of the Appeal Panel and determined that the decision of the Appeal Panel was made without any extricable error of law and the decision on sanction and costs were reasonable. The appeal was dismissed in its entirety.
