

**Alberta Dental Association and College
Decision of the Appeal Panel of Council
March 2017**

**IN ACCORDANCE WITH BYLAW 19(7) OF
THE ALBERTA DENTAL ASSOCIATION AND COLLEGE**

Dr. Michael Yar Zuk 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 the 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 confirmed the decision of the Hearing Tribunal and also ordered Dr. Zuk 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 the Appeal Panel of Council to the Court of Appeal of Alberta. This appeal to the Court of Appeal has not been scheduled. This Notice will report on the decisions of the Hearing Tribunal and the Appeal Panel of Council. There will be publication of the decision of the Alberta Court of Appeal.

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. A Hearing Tribunal is the decision maker and hears the evidence of the witnesses and legal argument. The Hearing Tribunal is composed of three registered dentists who are independent of the Alberta Dental Association and College and one public member, appointed by the Government of Alberta. 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 or not proven.

There were several allegations against Dr. Zuk that did not specifically involve his advertising practices and in relation to these allegations, the Hearing Tribunal found Dr. Zuk guilty of unprofessional conduct because he:

1. Made statements, demands and threats to a complainant that do not contribute to the public's trust and confidence in the dental profession.
2. Failed to comply with a request of or cooperate with an investigator of the Alberta Dental Association and College.
3. Breached a promise, or undertaking, to the Alberta Dental Association and College.

All of which breached the Health Professions Act, the Code of Ethics and/or do not contribute to the public's trust and confidence in the dental profession.

ONE: Making statements, demands and threats

The Hearing Tribunal found that Dr. Zuk engaged in letters and emails with some of the complainants wherein Dr. Zuk wrote:

- a. "Bottom line is I have a pile of complaints against me related to my advertising and none of the whiners are willing to let me settle it quietly with alternate resolution so guess what? I am giving ... one chance

to step up and admit this is a big waste of time.... to withdraw all of their complaints within 7 days and approve an alternate resolution ... or this crap is going to drag on and on and on.”

- b. The threat that Dr. Zuk would escalate this into a full blown media storm if the “complaints” were not resolved.
- c. Demand that the complainants either settle everything with Dr. Zuk or they would be “going down with the ugly truth.”
- d. Demand that the complainants “let the ADA&C lawyer know within 7 days what [they] prefer to do so I can put my pile of ... complaints on ice
 - if we go to war this is going to get really messy.”
- e. The threat that “... if your group is not prepared to agree to discuss the matter to help find a simple resolution I will filing to the ADA&C to see if they impose the same sanctions on all of your marketing efforts as well. This affects approximately 75% of ...so I will wait another 7 days to be sure your organization doesn’t want to reconsider the last response... I will also decline to work out my concerns with the individuals and let the process enforce bylaws equally among us until we are equally miserable.”
- f. “I’m giving the [complainants] one chance to step up and admit this is a big waste of time. Get [the complainant] to withdraw all their complaints within 7 days and approve an alternate resolution for a couple of things I mentioned to the ADA&C lawyer ... or this crap is going to drag on and on and on.”
- g. “PS. This is an ALL or NOTHING offer – even [a complainant] needs to agree to this and don’t pretend you can’t find him.”

The Hearing Tribunal stressed that Dr. Zuk sent these communications two weeks after he had requested and been granted an adjournment of his hearing in order to retain a new lawyer. Dr. Zuk was therefore demanding that the complainants withdraw their complaints and threatening that he would file complaints against them unless they did so.

The Hearing Tribunal mentioned that Dr. Zuk’s threats were not successful. However, the attack on the integrity of the profession arises from the attempts to use threats to force withdrawal of a complaint. This conduct harms the integrity of the profession even if it is unsuccessful because dentists cannot threaten complainants.

The Hearing Tribunal stated that a dentist has an obligation to participate in protection of the public and promotion of the public interest.

TWO: Failed to comply with a request of or cooperate with an investigator of the Alberta Dental Association and College.

The Hearing Tribunal referenced correspondence from the Complaints Director to Dr. Zuk wherein she requested Dr. Zuk’s response to several, detailed questions about his advertising. Dr. Zuk’s lawyer then began communicating with the Complaints Director about these questions and the Complaints Director wrote an additional two letters to Dr. Zuk’s lawyer requesting responses. The responses to the questions were not received.

The Hearing Tribunal stressed that the complaint investigation process is a fundamental part of the means by which with ADA&C protects the public interest. The ethical and legal duty of a dentist to comply with requests of and cooperate with an investigator is an essential part of ensuring that complaints are investigated fully and on a timely basis. The importance of this is stressed by the Health Professions Act and that one meaning of unprofessional conduct is failure or refusal to cooperate with an investigator.

THREE: Breached a promise, or undertaking, to the Alberta Dental Association and College.

The Hearing Tribunal discussed that in November of 2007, Dr. Zuk received a letter from the Complaints Director at the time. The letter addressed some of Dr. Zuk's radio and internet advertising and concluded that the advertising did not comply with the Code of Ethics. The letter identified several concerns with Dr. Zuk's advertising such as using discount coupons, contrary to Article B4 of the Code of Ethics and not including a statement that services are provided by a general dentist, as required by Article B4.8 of the Code of Ethics. The Complaints Director at the time asked Dr. Zuk to comply with the Code of Ethics in the future by signing and returning a copy of the letter. Dr. Zuk signed the letter and returned it.

The Hearing Tribunal reviewed the evidence and found that in relation to his book, Dr. Zuk did not breach his promise or undertaking to include a reference that he is a general dentist. The Hearing Tribunal reviewed the other evidence presented at the hearing and concluded that Dr. Zuk had not followed through with his promise or undertaking and continued to do bus bench advertising without a reference to general dentist.

The Hearing Tribunal also detailed the evidence about coupons and time limited discounts at the hearing and found Dr. Zuk continued to advertise coupons and time limited offers after his promise not to do so to the former Complaints Director.

The Hearing Tribunal found that the ADA&C is entitled to rely on undertakings from dentists and that Dr. Zuk has a professional duty to ensure he honoured his undertaking to the ADA&C.

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*.

The Hearing Tribunal discussed publications Dr. Zuk made and paid for in a local newspaper or published in an online dentist forum such as:

- a. "The public would be shocked to learn that forces inside the dental association that are being used to reduce competition for orthodontists in Alberta. For over 7 years a number of orthodontists have been working together to discredit alternative forms of orthodontic braces provided by general dentists."
- b. Where Dr. Zuk describes himself as "one of the first dentists in Canada to offer shorter term orthodontic braces" and describes a "full blown war".
- c. "They have built a case against my advertising and are using the ignorance of the dental association on these matters against my practice. This type of activity is likely a breach of competition law."
- d. "... I decided to resign [from Council] and form a lobby group to help dentists who were victimized by what I see as a corrupt system that breaches the public trust. Certain orthodontists are manipulating the dental association in an attempt to protect their turf, when even ADA consultants admit the orthodontists should not be allowed to prevent general dentists from offering braces."
- e. The advertisement concludes with Dr. Zuk directing the reader to his problems website.
- f. "25 % of the Alberta dental board (excluding the president) are orthodontic specialists. Specialists have more influence on the board and executive than [sic] the general membership."

In its reasons for finding that Dr. Zuk had engaged in unprofessional conduct in relation to these statements, 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. It is difficult to contemplate how comments suggesting a corrupt system manipulated by orthodontists, selective enforcement of rules, an “old boys club network” and an enforcement system applying ridiculous rules designed to attack and discredit general dentists doing orthodontic work while ignoring clear scientific evidence could be called any-thing other than a general attack on the ADA&C in the exercise of its regulatory duties. The advertisement was directed to the public and called for public action to deal with the many corrupt and perhaps illegal practices that Dr. Zuk with his insider knowledge (including a year on Council) was exposing ... 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.

The Hearing Tribunal identified other advertising and promotional practices of Dr. Zuk as breaching the Code of Ethics and the Health Professions Act and decided these breaches were serious enough to constitute unprofessional conduct, such as:

- www.bestdentistinreddeer.com and “Best dentist in Red Deer”
- Very high tech
- World’s most advanced dental restoration system
- Advanced power is a general beyond the original in office whitening procedures
- Superior bonding materials
- Exquisite craftsmanship using leading–edge labs and technology
- References to High Speed Braces as being a “secret” and “cutting edge new treatment option”
- Superior client care
- ... one of the biggest innovations in cosmetic dentistry today
- The Trademarked ... braces system is being used by dentists in Canada, the USA and the UK to allow rapid correction of cosmetic and bite problems in adults and teens.
- Dr. Zuk is “the FIRST GP to be accepted into the ‘Orthodontist Only’ training program.”
- Dr. Zuk has “advanced training in cosmetic dentistry and orthodontics but is not a specialist. Specialists usually focus on a particular area of dentistry and do not provide the multitude of services required in an advanced smile makeover.”
- “With training from UCLA’s Continuum on Aesthetic Dentistry and from the world class Seattle Institute of Advanced Dental Education, Dr. Zuk’s patients are assured of a unique and creative smile makeover.”
- “The ... technique involves a combination of skills combined to achieve a more attractive smile. It is not simply about doing braces faster, it involves advanced training in cosmetic dentistry, and reconstructive treatment planning along with the orthodontic treatment.”
- References to a group of dentists he calls “Veneer Nazis” as predators preying on the uneducated and impressionable dental consumer and that the dental profession is aware of these dentists.
- “The most advanced shorter term orthodontic system in the world is what we call HSB.”

- "... training for this unorthodox procedure is outside the traditional program taught in dental school or orthodontic graduate school: it is looked on with skepticism by those who know little about it."
- High Speed Braces and 3 month braces "are designed to help doctors (GP's/Specialists) stand out in the community and offer the highest standard of "Advanced Shorter Term Braces".
- Using coupons and time-limited offers
- Detailed comparisons claiming Dr. Zuk's braces are better than other systems or veneers.
- "Best or Red Deer Gold Winner – Best Dental Clinic 2014 – 2014 Reader's Choice Awards"

In reference to braces which are high speed or provide three month 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.

In their decision to order Dr. Zuk serve a one year suspension, pay costs of the investigation and hearing of \$175,000.00, and complete the Ethics Program, the Hearing Tribunal considered Dr. Zuk's conduct after the hearing and before the submissions about what sanction he should receive. The Hearing Tribunal considered whether Dr. Zuk was ungovernable and therefore should have his registration as an Alberta dentist cancelled. The Hearing Tribunal found that there are elements of Dr. Zuk's unprofessional conduct that are serious enough to raise the question of his ungovernability. It enforced that a consistent failure to abide by these rules makes it impossible for the regulatory body to govern the member and if the member is "ungovernable" the member cannot be permitted to practice dentistry. Ultimately, the Hearing Tribunal concluded that Dr. Zuk is governable.

DECISION OF THE APPEAL PANEL OF COUNCIL

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 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 discussed the evidence that was before the Hearing Tribunal as well as the submissions made at the appeal. The Appeal Panel admitted that it may have found Dr. Zuk to be ungovernable. However, the decision of the Hearing Tribunal was reasonable and the 12 month suspension was in the range of possible, acceptable outcomes.

The Appeal Panel also stressed that it fully agreed with the decision of the Hearing Tribunal and stated:

"In particular, the Appeal Panel wishes to make clear that it fully agrees with the Hearing Tribunal that Dr. Zuk's unprofessional conduct was extremely serious and required a very serious sanction because it attacked the fundamental integrity and honor of the dental profession. In the Appeal Panel's opinion, the actions taken and the lack of respect for the authority of the ADA&C shown by Dr. Zuk clearly raised the issue of whether or not he was ungovernable and the Appeal Panel believes that a finding that Dr.

Zuk was ungovernable was certainly a possible outcome based on the evidence before the Hearing Tribunal.”

The Appeal Panel affirmed that compliance by dentists in Alberta with the Code of Ethics is not optional, it is essential. The 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.