

Alberta Dental Association and College Hearing Tribunal Decision

IN ACCORDANCE WITH BYLAW 20(7) OF THE ALBERTA DENTAL ASSOCIATION AND COLLEGE

From April 3 to 7, April 9 to 12, June 17 and June 23 of 2017, a contested hearing was held in Edmonton to address allegations of unprofessional conduct against Dr. Andrew Meikle. After the submissions the Hearing Tribunal wrote a decision, a summary of which is below. The Hearing Tribunal will prepare a separate written decision setting out the sanction resulting from the findings of unprofessional conduct. There is a right of appeal of the decision after the Hearing Tribunal makes a decision on sanction.

SUMMARY OF FACTS

The subject of the hearing was the purchase of four dental practices (two general practices and two orthodontic specialty practices) in Alberta by Dr. Meikle (through his professional corporation "Meikle PC") and Dental Corporation of Canada Inc., or subsidiaries of Dental Corporation of Canada Inc., (collectively "DCC") and the ongoing business arrangements in the operation of the dental practices. The issue was whether the purchases and ongoing business arrangements breached provisions of the *Health Professions Act*, ("HPA") the *Health Information Act* and Standard.

In each instance, the contract to purchase resulted in one dental practice being separated into two businesses. The businesses were a dental practice owned by Meikle PC and a "Health Services Business" owned and operated by DCC. The concept resulted in one business (owned by Meikle PC) providing the "professional services" of a dentist and the other business (owned by DCC) providing what were termed "technical services".

Dr. Meikle had no direct involvement in the running of the dental practices. For each dental practice, the selling dentist agreed to continue to practice dentistry as an associate in the practice and to supervise the technical services being provided. The professional services were the services that only a dentist could provide. The technical services were all services that could be provided by non-dentists.

The two businesses each charged a fee in relation to the treatment – a fee for professional services and a separate fee for technical services. The HPA prohibits a dentist or professional corporation from providing professional services on behalf of or for the benefit of any corporation other than a professional corporation. The HPA also prohibits a dentist from dividing, sharing, splitting or allocating, directly or indirectly, any fee for professional services with any person other than another dentist or a professional corporation.

Although the contracts with each selling dentist had unique features, generally all of the contracts between the selling dentists, DCC and Meikle PC contained similar terms, recognized by the Hearing Tribunal such as:

1. Nothing changed in terms of how the practice was conducted and patients were treated before the acquisition and after the acquisition, in terms of the billing, staff and management of the dental practice by the selling dentist.

2. The dentist set the fee for each dental procedure. The one fee that was recognized before the sale was divided into two fees (for professional services and for technical services) after the sale.
3. Technical services included communications with patients, communications with other doctors or dentists, sterilization of instruments, tray set-up, record keeping and informed consent. Technical services also included all work done by any RDH or RDA who worked at the practice.
4. The selling dentist decided which percentage of the split fee would go to technical service and which percentage would go to professional service.
5. Insurers and patients received a single bill for the two types of fees for service (they were not divided on the bill as two fees).
6. The selling dentist acknowledged full responsibility and liability for everything done at the practice, post-sale. Dr. Meikle as the “owning” dentist did not actively manage or supervise the dental practices. He did not provide dental services at any of the dental practices and provided no operational control of the dental practices.
7. The same employees at the practice pre-sale remained at the practice post-sale but were paid by DCC.
8. The fees paid by the patients were received by DCC and allocated by DCC.
9. The same single set of patient records that were maintained pre-sale were maintained post-sale.

While nothing changed in the way the dentist and staff operated the practice, or the way the patients experienced the practice from pre-sale to post-sale, some things had changed, such as:

1. DCC owned all physical assets of the dental practice.
2. By contract, Dr. Meikle was shown as the owner of the patient records but DCC could terminate this contract with 90 days’ notice and the patient records could be transferred to another regulated member designated by DCC.
3. DCC employed the staff.
4. DCC received all the fees charged by the practice.
5. DCC kept almost all of the fees except the amounts paid to the associate dentists because DCC directly retained that portion of the fees that were called “technical services” and DCC retained most of the remaining “professional fees” not paid to associate dentists because it used these fees to reduce the debt that Meikle PC owed to DCC for the purchasing of the goodwill and records of the practice or to pay for the expenses of operating the dental practice.

FINDINGS OF UNPROFESSIONAL CONDUCT

Below is a summary of the allegations that were found to be proven. Some allegations were dismissed by the Hearing Tribunal.

1. **Carrying on the practice of dentistry on behalf of DCC, which does not meet the requirements of one or more of sections 97 to 115 of the HPA.**

Section 104 of the HPA says that a dentist may provide professional services on behalf of a corporation only if it is a professional corporation that holds a permit under the HPA, and that a professional corporation may only provide the professional services of a regulated member of the ADA&C. DCC is not a professional corporation under the HPA. The Hearing Tribunal found that the technical services were part of the practice of dentistry and therefore

Dr. Meikle, through Meikle PC, and associate dentists were providing professional services on behalf of DCC. These actions breached section 104 of the HPA.

This charge really came down to what is the practice of dentistry. Dr. Meikle took the position that the dentist wore two hats – the dentist provided dental services as part of the practice of dentistry and also supervised the technical services. Dr. Meikle argued that those services were not part of the practice of dentistry and therefore could be provided on behalf of DCC. The Hearing Tribunal rejected this argument and found that the effect of this position was that parts of the activities that occurred in the dental practice were excluded from regulation by the ADA&C.

The Hearing Tribunal decided that when a dentist supervises and directs the provision of dental services to patients in a practice or supervises individuals assisting the dentist in providing a dental service to a patient, the dentist is engaged in the practice of dentistry.

2. Engaging in the practice of dentistry in an arrangement where fees for professional services are divided, split, shared, allocated either directly or indirectly with a person who is not a regulated member, contrary to section 98(1)(f) of the HPA.

Dr. Meikle also argued that he was not fee splitting contrary to the HPA because he was not splitting the fee for professional services. A fee was charged to patients for professional services and a separate fee was charged for technical services. The Hearing Tribunal decided that the technical services were actually professional services and that the arrangement resulted in fee splitting contrary to the HPA.

This charge came down to what the HPA means by professional services. The Hearing Tribunal decided that the clinical supervision and control of the dental practices exercised by the dentists in order to provide services to patients prior to the sale of the practice involved providing professional services. After the contracts were entered into and the dental practices were sold, the dentists as Associates of Meikle PC continued to provide the same clinical supervision and control of the practices in order to provide services to patients.

The practice of dentistry includes when a dentist supervises and directs the provision of dental services to a patient or is assisted in providing dental services to a patient. Delegation or assignment of duties by a dentist to individuals that the dentist supervises is not new and involves the provision of professional services.

The fees billed for services performed at the dental practice, under the clinical supervision and direction of the dentist are fees for professional services. DCC received a percentage allocation of every dental procedure performed at each practice. The actual effect and substance of the contracts was that Meikle PC was splitting professional fees with DCC, a non-dentist.

The Hearing Tribunal found that Meikle PC and DCC have moved parts of the practice of dentistry outside of the regulatory scheme in order to allow them to split the fees generated by the dental procedures performed at the practice and avoid the prohibition in section 98(1)(f) of the HPA.

3. Engaging in the purchase of one or more dental practices in an arrangement that breaches one or more of sections 97 to 115 of the HPA.

The Hearing Tribunal found that Dr. Meikle entered into arrangements with DCC and the selling dentists to purchase the dental practices that breached sections 98(1)(f) and 104 of the HPA.

4. Failing to enter into an agreement with DCC to manage information, as an information manager contrary to the Health Information Act and permitting custody of or access to health information by non-custodians or non-affiliates contrary to the Health Information Act.

Following the purchase of the four practices, DCC was performing the functions of an information manager for Dr. Meikle and Meikle PC in each practice. No written information manager agreement was prepared or signed for any of the four dental practices until near the conclusion of the hearing.

This was a breach of section 66(2) of the Health Information Act, section 7.2 of the Health Information Act Regulation and paragraph 13 of the Health Information Standard of the ADA&C.