

Alberta Dental Association and College Hearing Tribunal Decision January 22, 2014

After a hearing on January 21 and 22, 2014, a Hearing Tribunal found Dr. Connie Farion (also known as Dr. Connie Bahrey) guilty of unprofessional conduct. On September 5, 2014, the Hearing Tribunal sanctioned Dr. Farion.

The Hearing Tribunal found that Dr. Farion was guilty of unprofessional conduct because of her business arrangements and structure. Specifically, the Hearing Tribunal concluded Dr. Farion was guilty of unprofessional conduct because:

1. She entered into a contractual arrangement for the sale of her dental practice that was in breach of one or more of sections 104 to 115 of the *Health Professions Act*.
2. She carried on the practice of dentistry on behalf of a corporation that did not meet the requirements of sections 104 to 115 of the *Health Professions Act*.
3. She engaged in the practice of dentistry in an arrangement where fees for professional services are divided, shared, split, allocated either directly or indirectly with a person who is not a regulated member of the Alberta Dental Association and College, contrary to section 98(1)(f) of the *Health Professions Act*.
4. She entered into an arrangement where the referral of patients resulted in a fee paid, a commission or discount or other consideration to another party, contrary to Article B5 of the *Code of Ethics*.
5. She carried on the practice of dentistry or entered into an arrangement in a manner that harmed the integrity of the dental profession.

The Hearing Tribunal stressed that no other form of corporation, except a dental professional corporation, is allowed to be involved in the ownership or operation of a dental practice. The Hearing Tribunal found Dr Farion did sell her dental practice to a corporation that was not a dentist's professional corporation and that this sale was a breach of the intent and purpose of section 104 of the *Health Professions Act* by placing a dental practice under the control of a non-dentist.

The Hearing Tribunal noted Dr. Farion had been engaging in an illegal practice of dentistry for 6.5 years, at the time of the hearing.

With respect to each finding of unprofessional conduct, the Hearing Tribunal noted:

1. She entered into a contractual arrangement for the sale of her dental practice that was in breach of one or more of sections 104 to 115 of the *Health Professions Act*.

The Hearing Tribunal stressed that Dr. Farion sold her dental practice to non-members of the ADA+C. As part of the sale of the dental practice, the Hearing Tribunal referred to the business valuation she arranged to be prepared that calculated a fair market value of the dental practice; the goodwill of the practice was included as part of the value of the dental practice; there was a

non-competition agreement; patient lists and patient records were included; and the roles of employees of the dental practice were defined.

The Hearing Tribunal rejected the arguments that the sale of assets of a dental practice did not constitute a sale of a dental practice.

2. She carried on the practice of dentistry on behalf of a corporation that did not meet the requirements of sections 104 to 115 of the *Health Professions Act*.

The Hearing Tribunal concluded Dr. Farion had relinquished control of significant parts of the dental practice. It found several factors that supported the finding of unprofessional conduct. Dr. Farion had sold her patient records to a non-member. The Hearing Tribunal high-lighted the discretion given to the non-member in the management of the dental practice including hiring and firing of employees, supervision, acquisition of supplies and equipment, billing and collection and creation of work schedules.

The Hearing Tribunal rejected the arguments that Dr. Farion was involved in a practice in association with a non-member based on the various cost sharing provisions and the management fee paid to the non-member. The Hearing Tribunal found Dr. Farion received a set percentage of her fees, as did the management company.

The Hearing Tribunal stressed Dr. Farion was carrying on the practice of dentistry on behalf of a corporation that was not a dentist's professional corporation by paying a fixed percentage of her fees to a non-member who both owned all of the assets of the dental practice and managed it in its sole discretion (but with consultation of another non-member).

3. She engaged in the practice of dentistry in an arrangement where fees for professional services are divided, shared, split, allocated either directly or indirectly with a person who is not a regulated member of the Alberta Dental Association and College, contrary to section 98(1)(f) of the *Health Professions Act*.

The Hearing Tribunal considered the meaning of section 98(1)(f) that clearly prohibits dividing, sharing, splitting or allocating fees with a non-dentist and found this provision requires that a division or splitting of fees can only be made with another dentist. The Hearing Tribunal also concluded Dr. Farion was not in a practice in association, as defined by the *Health Professions Act*.

4. She entered into an arrangement where the referral of patients resulted in a fee paid, a commission or discount or other consideration to another party, contrary to Article B5 of the Code of Ethics.

The Professional Association and Cost Sharing Agreement entered into by Dr. Farion required Dr. Farion to pay a referral fee to the non-dentist for each patient referred to Dr. Farion by the non-dentist or for each patient that had become a patient of the non-dentist, by virtue of the sale of the dental records to the non-member.

The Hearing Tribunal noted Dr. Farion discontinued paying the referral fee in about April of 2012 although she paid it from October of 2007 to April of 2012.

Dr. Farion argued she relied on legal advice. The Hearing Tribunal stressed the responsibility of each dentist to be aware of the Code of Ethics and to comply with the provisions.

5. She carried on the practice of dentistry or entered into an arrangement in a manner that harmed the integrity of the dental profession.

The Hearing Tribunal stressed Dr. Farion and the non-dentist entered into agreements that contained terms that Dr. Farion and the non-dentist claimed were varied by them in an informal verbal agreement. One purpose of the formal agreements was to obtain purchase financing from a bank that was not advised the terms of the agreement were varied, as proposed by Dr. Farion and the non-dentist.

The Hearing Tribunal highlighted the significance to the integrity of the profession if the bank became aware that a dentist was entering into formal agreements to assist in the purchase of the dentist's practice but had an arrangement with the purchaser that parts of the agreement required by the bank would never be enforced. The Hearing Tribunal noted the provisions of the agreement that had been modified to provide a fixed percentage of Dr. Farion's revenues to a non-dentist.

The Hearing Tribunal was greatly concerned about treating patient records as a commercial asset and the effect on the integrity of the profession as a result of selling patient records to a numbered corporation that had none of the fiduciary responsibilities of the regulated member. It noted the security and confidentiality of the patient records is a major concern and a matter of public interest under the *Health Information Act* and the *Health Professions Act*. The Hearing Tribunal found that Dr. Farion placed her patient records into the hands of a corporation that was not subject to any form of regulation under the *Health Professions Act* and that was not a custodian under the *Health Information Act*.

The Hearing Tribunal emphasized that patient records cannot be treated as a commercial asset which can be sold or transferred to anyone except a dentist. The security and confidentiality of patient records is a fundamental part of the obligations of a dentist. Conduct that treats patient records simply as commercial assets that can be sold to a corporation that is not subject to any regulation or duties of a health professional is conduct that harms the integrity of the dental profession.

The Hearing Tribunal made a specific reference to the reliance Dr. Farion placed on legal advice and that she did not believe she was breaching the provisions of the *Health Professions Act*. The Hearing Tribunal noted the provisions of section 1(1)(pp) that enforce conduct can be unprofessional whether or not it is disgraceful or dishonorable. The public interest and integrity of the profession must be protected because a dentist could engage in unprofessional conduct without consequence based on either legal advice or ignorance of the *Health Professions Act* or the Code of Ethics.

The Hearing Tribunal ordered that:

1. Dr. Farion is suspended for one month to be served within the next 12 months;
2. Dr. Farion pay fines of \$2,500 for each charge for a total fine of \$12, 500 to be paid within 90 days of receipt of the sanction decision;
3. Dr. Farion complete the Alberta Dental Association and College Ethics Program on or before September 4, 2015 and the hours will not count toward her continuing education requirements;
4. Dr. Farion bring her practice into compliance by December 31, 2014;
5. Dr. Farion's dental practice will be reviewed. The review and a report on the results of the review will be completed by March 31, 2015. The cost of the report will be paid for by Dr. Farion. Dr. Farion will be provided a copy of the report and given an opportunity to comment and respond to the report; and
6. Dr. Farion shall pay costs of the investigation and hearing of \$82,131.95.