

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF AUDIOLOGISTS AND
SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO**

PANEL:	Meg Petkoff	Chairperson
	Rosanne Lavallée-McNamee	Professional Member
	Ferne Dezenhouse	Public Member
	Bryan de Sousa	Public Member
	John Oleg Krawchenko	Public Member

BETWEEN:)
)
COLLEGE OF AUDIOLOGISTS AND) Bernie LeBlanc for the
SPEECH-LANGUAGE PATHOLOGISTS) College of Audiologists and
OF ONTARIO) Speech-Language Pathologists of Ontario

- and -

) Warren Biback for
) the Member, Stefan Fridriksson
STEFAN FRIDRIKSSON)
Certificate. No. 1440)
)
) Heard: February 11, 2009

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on February 11, 2009 at the College of Audiologists and Speech-Language Pathologists of Ontario (the "College") at Toronto.

The Allegations

A Notice of Hearing, dated December 19, 2007 containing a Statement of Allegations was filed as Exhibit No. 1.

The Statement of Allegations enumerated elements of an advertisement published on behalf of Mr. Fridriksson on or about June 21, 2007 as well as on or about June 27, 2007. It was alleged that Mr. Fridriksson had engaged in professional misconduct within the meaning of paragraphs 2 (standards of practice), 34 (improper advertising) and 37 (an act relevant to the practice of the profession that, having regard to all of the circumstances, would reasonably be regarded by

members as disgraceful, dishonorable or unprofessional), of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*.

College counsel asked for and received the panel's permission to withdraw allegations of professional misconduct within the meaning of paragraphs 2 (standards of practice) and 37 (an act relevant to the practice of the profession that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional), of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*. The hearing proceeded on the basis of the remaining allegation of misconduct under paragraph 34 of the Regulation.

Agreed Statement of Facts

The Member admitted the substance of the allegations against him.

Counsel for the College advised the panel that an agreement had been reached on the facts. An Agreed Statement of Facts, dated September 30, 2008 was filed as Exhibit No. 2.

The hearing proceeded upon the Agreed Statement of Facts which provided the following agreed upon facts:

1. Stefan Fridriksson is an audiologist registered as a member of the College of Audiologists and Speech-Language Pathologists of Ontario ("the College").
2. On or about June 21, 2007, an advertising agency engaged by Mr. Fridriksson published an advertisement in *The Niagara Falls Review*. A similar advertisement was published by the same agency on or about Wednesday, June 27, 2007 in *Niagara This Week*.
3. In the advertisements, the following statements are attributed to Mr. Fridriksson:
 - a. "**anyone** can sell hearing aids in Ontario". [emphasis in original]
 - b. "the dispensing, fitting and selling of hearing aids in Ontario is simply **unregulated**". [emphasis in original]
 - c. Members of the public require a prescription to consult with a hearing instrument specialist whereas they do not require a prescription to consult with an audiologist.
 - d. The primary concern of an audiologist is hearing health, not sales.
 - e. "Too often, unfortunately the most important qualification for an H.I.S. [Hearing Instrument Specialist] is that they're a good salesperson, whose main goal is to sell more hearing aids. In this environment, quality of care and service is often not a priority".
 - f. An audiologist has "passed a national competency examination".
 - g. "Unlike an H.I.S., an audiologist can't just 'make up' their credentials".
 - h. In contrast to audiologists who are more concerned with a patient's overall hearing health, the focus for an H.I.S. "can be on sales using high-pressure techniques"
 - i. "**An audiologist will diagnose the problem, not just treat the symptoms**". [emphasis in original]
 - j. "it's all about proper diagnosis".

4. Attached to the Agreed Statement of Facts are copies of the June 21, 2007 advertisement that appeared in *The Niagara Falls Review* and the advertisement of June 27, 2007 in *Niagara This Week*.
5. Had he testified, Mr. Fridriksson would have stated that these advertisements were published without his specific knowledge and approval as he was in Italy at the time of publication and he had not seen the advertisements prior to publication. However, Mr. Fridriksson acknowledges (a) that it was within his advertising plan to distinguish the differences in qualification between audiologists and hearing instrument specialists; (b) that he provided the information contained in subparagraphs 3a., 3b., 3d, 3e, 3f, 3g. and 3h. hereof to the advertising agency that placed the ads; (c) that the advertising agency misinterpreted certain information provided by Mr. Fridriksson when publishing subparagraph 3c. and otherwise arranged for the publication of information within the text which was false and/or misleading and employed language from which inappropriate inferences might be drawn; (d) that the advertising agency clearly was of the impression from its discussions with Mr. Fridriksson that it had Mr. Fridriksson's permission to publish the ads; (e) that Mr. Fridriksson had no specific controls in place at the time which would have prevented these offending advertisements from being published; (f) that while he may not have been aware that these specific advertisements would be published, he did intend to publish advertisements similar to the advertisements in question which were not offensive, false or misleading with relevant information to those choosing a practitioner and that advertisements complained of did not meet these criteria. Consequently, Mr. Fridriksson acknowledges for the purposes of these proceedings that he is responsible for the advertisements complained of as he engaged the advertising agency and he was aware that advertisements would be running.
6. Mr. Fridriksson thereby engaged in professional misconduct within the meaning of paragraph 34 (improperly permitting advertising with respect to the member's practice) of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*.
7. The parties hereby accept these facts as accurate.
8. Mr. Fridriksson understands the nature of the allegations that have been made against him and that by voluntarily admitting these allegations; he waives his right to require the College to otherwise prove the case against him.
9. Mr. Fridriksson further understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
10. Mr. Fridriksson further understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and the member's name.
11. Mr. Fridriksson further understands that any agreement between the College and the member does not bind the Discipline Committee.
12. Mr. Fridriksson acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

Member's Plea

The Member admitted to the allegations of professional misconduct as enumerated in the Agreed Statement of Facts (Exhibit No. 2). Specifically, Mr. Fridriksson admitted that he engaged in professional misconduct within the meaning of paragraph 34 (improperly permitting advertising with respect to the member's practice) of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*.

The panel conducted a plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

The parties made submissions respecting the finding of professional misconduct and the panel withdrew to deliberate.

Decision on Misconduct

The Member is governed by a code of conduct set out in the Ontario Regulation 749/93 wherein at section 1 (34) the following act is considered professional misconduct:

(34) Improperly advertising or permitting advertising with respect to the Member's practice.

The Member has admitted to breaching this section by way of a plea of guilt with an Agreed Statement of Fact.

On the facts as admitted and the plea accepted by the panel, the Member is found guilty of professional misconduct in permitting advertising with respect to the Member's practice which contained some false and misleading information.

Joint Submission as to Penalty

Counsel for the College advised the panel that the parties were presenting a Joint Submission as to Penalty. A Joint Submission as to Penalty, dated September 30, 2008 was filed as Exhibit No. 3.

The hearing proceeded upon the Joint Submission as to Penalty.

The Joint Submission contained the following statements:

1. The College of Audiologists and Speech-Language Pathologists of Ontario and Stefan Fridriksson ("the member") agree and jointly submit that the Discipline Committee make an order:
 - a. Reprimanding the member.
 - b. Requiring the member to pay the College's costs fixed in the amount of \$2,000.00 within three (3) months from the date of this hearing.
 - c. Directing that the results of the proceeding be included in the register pursuant to

subsection 23(5) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*.

2. Should the Discipline Committee make an order as set out in the preceding paragraph, the member acknowledges that this matter will be publicized through, among other things, *CASLPO Today* and the public portion of the register, and that publication will include the member's name.
3. In support of this Joint Submission, the parties agree that on June 26th, 2007, while still in Italy, Mr. Fridriksson became aware of the publication of the June 21st, 2007 advertisement and was informed that an identical advertisement was scheduled for publication the following day in *Niagara This Week*. Mr. Fridriksson tried but was unable to prevent the publication of the second advertisement since the *Niagara This Week* was ready to print.
4. Mr. Fridriksson had planned to publish apology and retraction before he was aware of the complaints made against him to the College from the complainant hearing instrument specialists which give rise to these proceedings. Attached is a copy of the apology and retraction that was placed in *The Niagara Falls Review* and *Niagara This Week* in December, 2007.
5. Had he testified, Mr. Fridriksson would have stated that his intention was to promptly publish an apology and retraction and that the newspaper was so informed in the first few days of July, 2007, but that shortly thereafter, certain hearing instrument practitioners within the newspaper circulation area threatened to sue Mr. Fridriksson over the same advertisements and publication of the apology and retraction was delayed pending finalizing the text by counsel for Mr. Fridriksson and counsel for the practitioners.
6. The member acknowledges that this Joint Submission as to Penalty is not binding upon the Discipline Committee.
7. The member acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

The parties made submissions respecting the Joint Submission as to Penalty and the panel withdrew to deliberate.

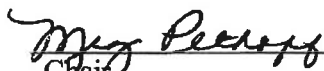
Decision on Penalty

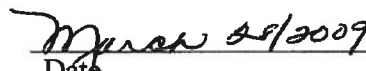
The panel concluded that the proposed penalty is reasonable and in the public interest. While the misconduct involved here is not a minor matter, the Member has shown genuine remorse and has continually co-operated with the College. By agreeing to the facts and a proposed penalty, the Member has accepted responsibility for his actions and has avoided unnecessary expense to the College. Counsel for the Member emphasized, and the panel accepted, that this conduct was out of character for this Member who has an otherwise unblemished record at the College and an excellent reputation amongst his peers.

The panel therefore accepts the Joint Submission as to Penalty and accordingly orders that:

- a. the Member appear before the panel to be privately reprimanded;
- b. the Member pay the College's costs fixed in the amount of \$2,000.00 within three (3) months of the date of this hearing
- c. the results of the proceeding be included in the register pursuant to subsection 23(5) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991.

I, Meg Petkoff, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below:


Chair


Date

Bryan de Sousa
Rosanne Lavallée-McNamee
Ferne Dezenhouse
John Oleg Krawchenko