

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

BETWEEN:

COLLEGE OF AUDIOLOGISTS
AND SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO

- and -

EZZAT GHAZAL, 4682

Panel Members:	Debra Zelisko	Chair, Audiologist
	Kim Eskritt	Audiologist
	Mary Suddick	Speech-Language Pathologist
	Scott Whyte	Public Representative
Present:	Mr. Bernie Le Blanc	Counsel for the College
	Ms. Melisse Willems	Director of Professional Conduct
	Ms. Sara Erskine	Counsel for the Member
	Mr. Ezzat Ghazal	Member
	Ms. Luisa Ritacca	Independent Legal Counsel to the Panel
Hearing Date:	July 23, 2013	

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee ("Panel") on July 23, 2013 at the College of Audiologists and Speech-Language Pathologists of Ontario ("College") at Toronto.

The Allegations

The allegations against Ezzat Ghazal, Audiologist ("Member"), as stated in the Notice of Hearing (Exhibit #1) were as follows:

1. Ezzat Ghazal was, at all material times, an audiologist registered to practise audiology in the province of Ontario. Mr. Ghazal practised at Winona Hearing Aid Center in Hamilton, Ontario.
2. From approximately September 2010 to April 2011, Mr. Ghazal prescribed hearing aids in a manner inconsistent with the standards of practice regarding the prescription of hearing aids to adults in that he was not involved in the assessment of the patients or the selection or validation of the devices.
3. Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession) and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.
4. From approximately September 2010 to April 2011, Mr. Ghazal did not keep records in accordance with the standards of practice regarding records. In particular, Mr. Ghazal did not:
 - a. Take any or all reasonable steps to ensure that records were made, used, maintained, retained, transferred and disclosed in accordance with the standards of practice;
 - b. Keep complete records for his patients;

- c. Ensure that those records that were kept were legible; and
 - d. Maintain records in a manner that would ensure that a patient with a right to access those records could exercise that right.
5. For each of these reasons, Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.
 6. From approximately September 2010 to April 2011, Mr. Ghazal did not ensure that records pertaining to his patients were stored or transferred in a secure manner.
 7. Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

Member's Plea

The Member admitted all of the allegations. The Panel conducted a plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit #2) which provided as follows:

1. Ezzat Ghazal was, at all material times, an audiologist registered to practise audiology in the

province of Ontario.

Prescribing Hearing Aids

2. The Preferred Practice Guideline for the Prescription of Hearing Aids to Adults of the College of Audiologists and Speech-Language Pathologists of Ontario, Approved December, 2000, is attached hereto at **Tab "A"**. The parties agree that this document sets out the pertinent standards of practice of the profession in respect of prescribing hearing aids to adults.
3. From mid-August 2010 to April 6, 2011, Mr. Ghazal was employed by Winona Hearing Aid Centre ("Winona") in Hamilton. Mr. Ghazal signed various Assistive Devices Program ("ADP") Hearing Device Applications as the "Prescriber". Mr. Ghazal would have testified that he resigned his employment in April 2011 once he realized that Winona did not meet his professional and clinical standards.
4. The ADP is a funding program administered by the Government of Ontario which is separate from the College of Audiologists and Speech-Language Pathologists of Ontario. The goal of the Hearing Devices category of the ADP is to support an individual's purchase of a personalized hearing device that meets his/her basic hearing needs.
5. Attached hereto at the following tabs are records in respect of the following patients:

C.B. – Tab "B"

R.B.B. – Tab "C"

P.E. – Tab "D"

K.M. – Tab "E"

L.M. – Tab "F"

B-L.M. – Tab "G"

D.R. – Tab "H"

M.R. – Tab "I"

6. While employed at Winona, Mr. Ghazal understood that his role as a “Prescriber” was limited and bound to the requirements in the ADP Policy and Administration Manual (“ADP Manual”) for a “Prescriber”.
7. Therefore, Mr. Ghazal believed that his role as a “Prescriber” did not include performing hearing tests on Winona’s clients. Mr. Ghazal understood that his role was limited and bound to the information provided to him by the authorizers, dispensers and vendor.
8. Further, Mr. Ghazal did not perform hearing tests on any patients of Winona. In all cases, the hearing tests were performed by non-regulated persons (“hearing instrument specialists”) employed by Winona, in Mr. Ghazal’s absence.
9. Winona staff performed hearing tests in Winona’s clinic in a cubicle located inside a converted classroom (i.e., not in a sound booth). Other hearing tests were performed during home visits and at long term care facilities.
10. Acting as the “Prescriber”, Mr. Ghazal would have testified that it was unnecessary to inquire where the hearing tests were performed (i.e., in the office, at home, etc.).
11. Mr. Ghazal prescribed hearing aids on the basis of the audiograms and a discussion with the person who performed the test. The devices were selected and fitted by the same persons who performed the audiograms. Had he testified, Mr. Ghazal would have said that he supervised the fittings performed by Hearing Instrument Specialists. However, there are no such records evidencing such supervision.
12. Mr. Ghazal did not take client histories, conduct hearing tests, or record notes.
13. According to Mr. Ghazal, under the ADP Manual audiologists, like physicians, can issue generic prescriptions for hearing aids, in that there is no requirement to specify the brand, model, or gain.

14. The parties agree that the ADP Manual does not set out the standards of practice of the profession in respect of prescribing hearing aids to adults. Rather, the standards are set out in the Preferred Practice Guideline for the Prescription of Hearing Aids to Adults of the College of Audiologists and Speech Language Pathologists of Ontario
15. Mr. Ghazal prescribed hearing aids in a manner inconsistent with the standards of practice regarding the prescription of hearing aids to adults in that he was not involved in the assessment of the patients or the selection or validation of the devices.
16. Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession) and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

Records

17. Mr. Ghazal did not keep any records of his interactions with patients.
18. Mr. Ghazal believed that under the requirements in the ADP Manual, the vendor and authorizers, not the prescribers, were responsible for collecting information and record keeping.
19. Mr. Ghazal was unaware as to how client records were stored.
20. From approximately mid-August 2010 to April 2011, Mr. Ghazal did not keep records in accordance with the standards of practice regarding records. In particular, Mr. Ghazal did not:
 - a. Take any or all reasonable steps to ensure that records were made, used, maintained,

- retained, transferred and disclosed in accordance with the standards of practice;
- b. Keep complete records for his patients;
 - c. Ensure that those records that were kept were legible; and
 - d. Maintain records in a manner that would ensure that a patient with a right to access those records could exercise that right.
21. For each of these reasons, Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the Audiology and Speech-Language Pathology Act, 1991, S.O. 1991, c. 19.
22. From approximately mid-August 2010 to April 2011, Mr. Ghazal did not ensure that records pertaining to his patients were stored or transferred in a secure manner.
23. Mr. Ghazal thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the Audiology and Speech-Language Pathology Act, 1991, S.O. 1991, c. 19.
24. The parties agree that these facts are substantially accurate.
25. Mr. Ghazal 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.

26. Mr. Ghazal understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
27. Mr. Ghazal 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 his name.
28. Mr. Ghazal understands that any agreement between him and the College does not bind the Discipline Committee.
29. Mr. Ghazal acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

The Panel also received as part of the agreed statement of facts, evidence from the files for a number of patients, whose identities and personal health information were protected by publication ban.

DECISION

The Panel considered the Agreed Statement of Facts (Exhibit #2) and found the Member to have committed acts of professional misconduct as defined by paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required) and paragraph 37 (engaging in conduct or performing 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, dishonourable or unprofessional) of section 1 of O. Reg. 749/93 under the *Audiology and Speech-Language Pathology Act, 1991* ("Professional Misconduct Regulation"). In particular, the Panel found that the Member:

1. Failed to prescribed hearing aids in a manner consistent with the standards of practice or the preferred practice guideline for prescription of hearing aid hearing aids to adults including:
 - (1) Failing to perform the hearing assessments on any of the patients of Winona, but

instead using test results provided by non-regulated persons who conducted the assessments in the Member's absence;

- (2) Failing to take client histories, record notes or conduct hearing tests;
- (3) Failing to actively participate in the selection or verification and validation of the devices prescribed for patients;
- (4) Failing to provide the electroacoustic and non-electroacoustic characteristics of the devices prescribed as outlined in the preferred practice guideline;
- (5) Failing to verify and validate hearing aid device performance as outlined in the preferred practice guideline;
- (6) Failing to ensure resource requirements met the minimal standards or providing any documentation to support exceptional circumstances;

2. Failed to keep records in a manner consistent with the standards of practice including

- (1) Failing to keep records of any interactions with his patients;
- (2) Failing to ensure records were made, used, maintained, stored, transferred and disclosed in accordance with the standards of practice;
- (3) Failing to complete records for his patients;
- (4) Ensuring records that were kept were legible;
- (5) Maintaining records in a manner that would ensure that a patient with a right to access those records could exercise that right.

Reasons for Decision

The Panel deliberated and after due consideration of all of the facts and the Member's admission to the allegations, accepted the Agreed Statement of Facts as presented which substantiated the findings of professional misconduct made by the Panel.

The Panel accepted the evidence presented in "Tabs B – I" as representative of the Member's standard of practice and care from mid-August 2010 to April 2011. In these submissions there was no evidence that the hearing aids the Member prescribed were done so in a manner consistent with the standard of practice for prescription of hearing aids. The evidence provided indicated that

all test results and documented case histories of patients were conducted by non-regulated persons. Further, there was insufficient documentation with respect to resource requirements including test environment, test equipment, and testing methodology. Test results presented in the submission that were either of questionable validity or warranted medical consultation lacked any accompanying evidence of recommendations or follow up by the Member. There was no evidence that the Member provided any direct supervision of the non-regulated persons or had any direct contact with his patients. The files submitted lacked any evidence that the Member took any role in the prescription process as outlined in the preferred practice guideline, including consideration of non-electroacoustic and acoustic factors, providing specifics of the hearing aids prescription including make, model or any patient specific factors (e.g venting, tubing style, special applications, modifications), or ensuring that copy of the prescription was kept on file. Further, the submissions lacked any evidence that the Member performed any verification or validation of hearing aid performance or patient benefit, and there were no records indicating how the hearing aid settings were finalized. In summary, the evidence presented indicated an unacceptable standard of practice, with little concern for patient safety or regulatory requirements.

Penalty and Costs

Counsel for the College presented to the Panel a Joint Submission as to Penalty (“JSP”) and requested that the Panel make the following Order:

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded, the fact of which shall be recorded on the public register of the College.
2. The Panel of the Discipline Committee shall direct the Registrar to suspend the Member’s certificate of registration for a period of one (1) month, itself to be remitted in the event that the Member complies with paragraph 3. In the event that the Member’s certificate of registration is suspended, the suspension shall commence on a date to be set by the Registrar but such date shall be no later than November 1, 2013.
3. The Panel of the Discipline Committee shall direct the Registrar to impose a specified

term, condition and limitation on the Member's certificate of registration requiring that the Member successfully complete, at his own expense and to the satisfaction of the Registrar, a course or other form of continuing education addressing proper prescribing and record-keeping, all of which must be successfully completed by no later than October 31, 2013.

4. The Panel of the Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring that the Member's records be randomly audited, at the member's expense and without notice to the member, for a period of two (2) years, such audits not to exceed four (4) sessions per year.
5. The Member shall pay to the College its costs fixed in the amount of \$4,000.00 within three (3) months of the date of the hearing.

Penalty and Costs Decision

The Panel deliberated and accepted the proposed penalty and order for costs. As such, the Panel ordered:

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded, the fact of which shall be recorded on the public register of the College.
2. The Panel of the Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for a period of one (1) month, itself to be remitted in the event that the Member complies with paragraph 3. In the event that the Member's certificate of registration is suspended, the suspension shall commence on a date to be set by the Registrar but such date shall be no later than November 1, 2013.
3. The Panel of the Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring that the

Member successfully complete, at his own expense and to the satisfaction of the Registrar, a course or other form of continuing education addressing proper prescribing and record-keeping, all of which must be successfully completed by no later than October 31, 2013.

4. The Panel of the Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring that the Member's records be randomly audited, at the member's expense and without notice to the member, for a period of two (2) years, such audits not to exceed four (4) sessions per year.
5. The Member shall pay to the College its costs fixed in the amount of \$4,000.00 within three (3) months of the date of the hearing.

Reasons for Penalty and Costs

The Panel considered the submissions made by Counsel for the College on Penalty and Costs. The Member's counsel did indicate the member was in full agreement with the ultimate disposition. The Panel believed that the main purpose of the penalty decision was to protect the public by ensuring that the high professional standards as set out by the College of Audiologists and Speech-Language Pathologists of Ontario are met and maintained by the professional membership. The Panel agreed that the reprimand component of the penalty would serve multiple purposes including specific and general deterrence, public protection, and ensuring the high professional standards of the profession are followed by both the Member and the members at large as well as demonstrating to the public the College's commitment to ensuring that these standards are met. The Panel agreed that the remitted suspension component of the penalty was adequate as the Member had been co-operative, acknowledged his mistakes, and indicated a willingness to undertake the remedial component and uphold the standards of practice. The Panel felt that the remedial component and the auditing requirement of the penalty was essential and addressed both the need to ensure the Member is practicing with the required skills and competencies and to further ensure the safety of the public.

Accordingly, the Panel accepted the Joint Submission as to Penalty and Costs.

Waiver of Appeal and Reprimand

The Member waived his right of appeal and agreed that the reprimand be made in a public forum. The Panel delivered the reprimand on July 23, 2013.

I, Debra Zelisko, Audiologist, sign this Decision as Chairperson of this Discipline Panel and on behalf of the Panel members.

Date: August 6, 2013

Signed: Debra Zelisko
Chair, Panel of the Discipline Committee