

IN THE MATTER OF a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (“*Code*”) respecting one **DR. CHRISTOPHER McCULLOCH**, of the City of Toronto, in the Province of Ontario;

AND IN THE MATTER OF the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“*Dentistry Act Regulation*”);

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

NOTICE OF PUBLICATION BAN

This is formal notice that on October 29, 2021, the panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario made an Order directing that no person shall publish or broadcast the identity of any patients of the Member, or any information that could disclose the identity of any patients who are named in the Notice of Hearing and/or the Agreed Statement of Facts in this matter.

This Order is made pursuant to subsection 45(3) of the *Code*.

Subsection 93(1) of the *Code* reads:

93(1) Every person who contravenes an order made under subsection 7(3) or Section 45 or 47, or who contravenes subsection 76(3), 82(2) or (3), 85.2(1), 85.5(1) or (2) or 85.14(2) or Section 92.1 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.



Ms. Judy Welikovitch,
Chair, Discipline Panel

October 29, 2021

Date

**THE DISCIPLINE COMMITTEE OF THE
ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (“Code”) respecting one **DR. CHRISTOPHER McCULLOCH**, of the City of Toronto, in the Province of Ontario;

AND IN THE MATTER OF the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Dentistry Act Regulation”).

Members in Attendance: Ms. Judy Welikovitch, Chair
 Dr. Rajiv Butany
 Mr. Marc Trudell

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	)	Appearances:
)	
	)	Andrea Gonsalves
	)	Independent Counsel for the
	)	Discipline Committee of the Royal
	)	College of Dental Surgeons of Ontario
- and -)	
	)	Emily Lawrence
	)	For the Royal College of Dental
	)	Surgeons of Ontario
)	
DR. CHRISTOPHER McCULLOCH	)	Earl Heiber
	)	For Dr. Christopher McCulloch

Hearing held by way of videoconference

REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on October 29, 2021. This matter was heard electronically.

At the outset of the hearing, the College sought an order banning the publication of the names of patients, or any information that could be used to identify the patients, referred to in this matter. The Member consented to the request. The Panel granted the order, which extends to the exhibits filed, as well as to these reasons for decision.

THE ALLEGATIONS

The allegations against the Member are set out in a notice of hearing, dated May 11, 2021, as follows:

1. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that you submitted an account or charge for dental services that you knew or ought to have known was false or misleading relative to one or more of the following patients during the years 2015 to 2017, contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
G.A.	2016
R.B.	2017
C.B.	2016
J.C.	2016
M.C.	2015; 2016
D.F.	2016
C.F.	2016
W.G.	2017
J.L.	2016

W.L.	2016
S.L.	2016
A.L.	2016
P.M.1	2017
A.M.	2017
P.M.2	2017
C.M.	2016
D.R.	2017
L.R.	2017
J.R.	2016
R.S.	2017
P.T.	2016
Z.V.	2016
D.Z.	2017

Particulars:

- You submitted and/or arranged for the submission on your behalf of claims for services where the dates of treatment/service did not match the dates of service claimed (G.A., R.B., C.B., J.C., M.C., D.F., C.F., W.G., J.L., W.L., S.L., A.L., P.M.1, A.M., P.M. 2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
- Green Shield Canada (GSC) has an administrative policy that grafts are not eligible for reimbursement when performed in conjunction with an extraction or in an area where a tooth has previously been extracted.
 - You submitted and/or arranged for the submission on your behalf of claims for grafts which were performed in conjunction with the removal of teeth or roots (G.A., R.B., C.B., J.C., M.C., C.F., W.G., J.L., W.L., S.L., A.L., A.M., P.M.2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was performed in conjunction with the removal of an implant (P.M.1).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was placed at the site of an existing implant (P.M.1).

- You billed for complicated extractions without sufficient justification. In particular:
 - Chart notations do not indicate that a flap was raised and/or sectioning was performed, per the 71201 code description (R.B., W.G., A.L., A.M., J.R. and P.T.).
 - Pre-operative radiographs indicate that residual roots were removed; however, the appropriate codes to use for root removal are 72311, 72321 or 72331, rather than code 71201 (G.A., C.B., M.C., W.L. and D.R.).
 - An implant was removed; however, the appropriate code to use for implant removal is 79961 or 79962 (P.M.1).
2. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that you signed or issued a certificate, report or similar document that you knew or ought to have known contained a false, misleading or improper statement relative to one or more of the following patients during the years 2015 to 2017, contrary to paragraph 28 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
G.A.	2016
R.B.	2017
C.B.	2016
J.C.	2016
M.C.	2015; 2016
D.F.	2016
C.F.	2016
W.G.	2017
J.L.	2016
W.L.	2016
S.L.	2016
A.L.	2016
P.M.1	2017
A.M.	2017
P.M.2	2017
C.M.	2016

D.R.	2017
L.R.	2017
J.R.	2016
R.S.	2017
P.T.	2016
Z.V.	2016
D.Z.	2017

Particulars:

- You submitted and/or arranged for the submission on your behalf of claims for services where the dates of treatment/service did not match the dates of service claimed (G.A., R.B., C.B., J.C., M.C., D.F., C.F., W.G., J.L., W.L., S.L., A.L., P.M.1, A.M., P.M.2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
- Green Shield Canada (GSC) has an administrative policy that grafts are not eligible for reimbursement when performed in conjunction with an extraction or in an area where a tooth has previously been extracted.
 - You submitted and/or arranged for the submission on your behalf of claims for grafts which were performed in conjunction with the removal of teeth or roots (G.A., R.B., C.B., J.C., M.C., C.F., W.G., J.L., W.L., S.L., A.L., A.M., P.M.2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was performed in conjunction with the removal of an implant (P.M.1).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was placed at the site of an existing implant (P.M.1).
- You billed for complicated extractions without sufficient justification. In particular:
 - Chart notations do not indicate that a flap was raised and/or sectioning was performed, per the 71201 code description (R.B., W.G., A.L., A.M., J.R. and P.T.).
 - Pre-operative radiographs indicate that residual roots were removed; however, the appropriate codes to use for root

removal are 72311, 72321 or 72331, rather than code 71201 (G.A., C.B., M.C., W.L. and D.R.).

- o An implant was removed; however, the appropriate code to use for implant removal is 79961 or 79962 (P.M.1).

3. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that you charged a fee that was excessive or unreasonable in relation to the service performed relative to one or more of the following patients during the years 2015 to 2017, contrary to paragraph 31 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
G.A.	2016
R.B.	2017
C.B.	2016
J.C.	2016
M.C.	2015; 2016
D.F.	2016
C.F.	2016
W.G.	2017
J.L.	2016
W.L.	2016
S.L.	2016
A.L.	2016
P.M.1	2017
A.M.	2017
P.M.2	2017
C.M.	2016
D.R.	2017
L.R.	2017
J.R.	2016
R.S.	2017
P.T.	2016
Z.V.	2016
D.Z.	2017

Particulars:

- You submitted and/or arranged for the submission on your behalf of claims for services where the dates of treatment/service did not match the dates of service claimed (G.A., R.B., C.B., J.C., M.C., D.F., C.F., W.G., J.L., W.L., S.L., A.L., P.M.1, A.M., P.M.2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
- Green Shield Canada (GSC) has an administrative policy that grafts are not eligible for reimbursement when performed in conjunction with an extraction or in an area where a tooth has previously been extracted.
 - You submitted and/or arranged for the submission on your behalf of claims for grafts which were performed in conjunction with the removal of teeth or roots (G.A., R.B., C.B., J.C., M.C., C.F., W.G., J.L., W.L., S.L., A.L., A.M., P.M.2, C.M., D.R., L.R., J.R., R.S., P.T., Z.V. and D.Z.).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was performed in conjunction with the removal of an implant (P.M.1).
 - You submitted and/or arranged for the submission on your behalf of a claim for a graft which was placed at the site of an existing implant (P.M.1).
- You billed for complicated extractions without sufficient justification. In particular:
 - Chart notations do not indicate that a flap was raised and/or sectioning was performed, per the 71201 code description (R.B., W.G., A.L., A.M., J.R. and P.T.).
 - Pre-operative radiographs indicate that residual roots were removed; however, the appropriate codes to use for root removal are 72311, 72321 or 72331, rather than code 71201 (G.A., C.B., M.C., W.L. and D.R.).
 - An implant was removed; however, the appropriate code to use for implant removal is 79961 or 79962 (P.M.1).

THE MEMBER'S PLEA

The Member admitted the allegations of professional misconduct contained in the Notices of Hearing. The Member signed a written plea inquiry, which was entered into evidence at the hearing (Exhibit 2), and he confirmed at the hearing that he understood the contents of the document. The Panel was satisfied that Member's admissions were voluntary, informed and unequivocal.

THE EVIDENCE

On consent of the parties, the College introduced into evidence an Agreed Statement of Facts (Exhibit 3). The Agreed Statement of Facts provides as follows:

Background

1. Dr. Christopher McCulloch received his dental education at the University of Toronto in 1976, his speciality training as a periodontist from Columbia University in 1978, his PhD in cell biology from the University of Toronto in 1982 and he successfully completed his FRCD(C) specialization examination in periodontology also in 1982.
2. Dr. McCulloch was first registered with the College on June 16, 1978 and was registered to practise as a periodontist on February 22, 1982. He practised as a periodontist in Hamilton, Ontario until December 31, 2019 when he retired.
3. Dr. McCulloch works at the University of Toronto in both the Faculty of Dentistry and in the Department of Laboratory Medicine and Pathobiology of the Faculty of Medicine as a researcher and lecturer. He does not supervise students providing dental care to patients and since December, 2020 he no longer teaches dental students; his teaching is restricted to medical students, students enrolled in the Faculty of Arts and Science and doctoral candidates.

Events Giving Rise to Allegations

4. On September 20, 2017, Green Shield Canada ("GSC") submitted a complaint to the College regarding Dr. McCulloch's billing procedures. GSC asserted that Dr. McCulloch had:

- (a) submitted insurance claims for treatment that did not match the dates of the treatment claimed, and in particular, submitted claims for a surgical bone graft and an extraction that had been completed on the same day as if they were completed on different days, for the purpose of obtaining reimbursement for both, contrary to GSC's policy; and
 - (b) submitted claims for complicated extractions requiring a flap and/or sectioning of teeth without documentation to support the use of the complicated extraction billing code.
5. GSC had an administrative policy that grafts are not eligible for reimbursement when performed in conjunction with an extraction or in an area where a tooth has previously been extracted.
6. Dr. McCulloch admits and acknowledges that his office submitted claims for services where the dates of treatment did not match the dates of service claimed for the following patients. In particular, he admits that he completed grafts in conjunction with extractions or implants but his office billed the extractions/implant and grafts on different dates in order to obtain reimbursement for both. He admits that his office did so for the following patients and treatment:
- (a) G.A. (extraction and graft completed on March 5, 2017; extraction billed on March 5, 2017, graft billed on March 7, 2017);
 - (b) R.B. (extraction and graft completed on January 25, 2017; extraction billed on January 26, 2017, graft billed on January 25, 2017);
 - (c) C.B. (extraction and graft completed on November 16, 2016; extraction billed on November 17, 2016, graft billed on November 16, 2016);
 - (d) J.C. (extraction and graft completed on August 3, 2016; extraction billed on August 4, 2016, graft billed on August 3, 2016);
 - (e) M.C. (extraction and graft completed on November 21, 2015; extraction billed on November 24, 2015; and extraction and

- graft completed on July 13, 2016; extraction billed on July 21, 2016 and graft billed on July 13, 2016);
- (f) D.F. (extraction and graft completed on August 3, 2016; extraction billed on August 4, 2016; graft not claimed but billed to patient);
 - (g) C.F. (extraction and graft completed on November 30, 2016; extraction billed on December 1, 2016, graft billed on November 30, 2016);
 - (h) W.G. (extraction and graft completed on April 1, 2017; extraction billed on April 4, 2017, graft billed on April 1, 2017);
 - (i) J.L. (extraction and graft completed on June 11, 2016; extraction billed on June 11, 2016, graft billed on June 14, 2016);
 - (j) W.L. (extraction and graft completed on July 16, 2016; extraction billed on July 19, 2016, graft billed on July 16, 2016);
 - (k) S.L. (extraction and graft completed on November 2, 2016; extraction billed on November 3, 2016, graft billed on November 2, 2016);
 - (l) A.L. (extraction and graft completed on July 2, 2016; extraction billed on July 4, 2016, graft billed on July 2, 2016);
 - (m) P.M.1 (implant and grafts completed on January 14, 2017; implant billed on January 17, 2017, grafts billed on January 14, 2017);
 - (n) A.M. (extraction and graft completed on March 8, 2017; extraction billed on March 9, 2017, graft billed on March 8, 2017);
 - (o) P.M.2 (extraction and graft completed on May 2, 2017; extraction billed on May 4, 2017, graft billed on May 3, 2017);

- (p) C.M. (extraction and graft completed on June 15, 2016; extraction billed on June 16, 2016, graft billed on June 15, 2016);
 - (q) D.R. (extraction and graft completed on February 11, 2017; extraction billed on February 14, 2017, graft billed on February 11, 2017);
 - (r) L.R. (extraction and graft completed on January 4, 2017; extraction billed on January 5, 2017, graft billed on January 4, 2017);
 - (s) J.R. (extraction and graft completed on April 23, 2016; extraction billed on April 26, 2016, graft billed on April 23, 2016);
 - (t) R.S. (extractions and grafts completed on March 8, 2017; extractions billed on March 14, 2017, grafts billed on March 9, 2017);
 - (u) P.T. (extraction and graft completed on November 12, 2016; extraction billed on November 15, 2016, graft billed on November 12, 2016);
 - (v) Z.V. (extraction and graft completed on November 5, 2016; extraction billed on November 7, 2016, graft billed on November 5, 2016); and
 - (w) D.Z. (extraction and graft completed on January 11, 2017; extraction billed on January 12, 2017, graft billed on January 11, 2017).
7. If Dr. McCulloch were to testify, he would state that he did not oversee his office's billing procedures and was not aware that his receptionist/administrator was billing treatments in fact completed on the same day as if they were completed on different days. He would testify that when GSC audited his accounts, he first learned that his receptionist had post-dated claims for bone grafts, unilaterally and without consultation with or approval by Dr. McCulloch. He would further state that upon learning of what had transpired, he terminated the employment of his receptionist and made full restitution to GSC.

8. Dr. McCulloch admits and acknowledges that as the regulated professional and billing professional, he was responsible to ensure that all claims for services he performed were accurate, and admits and acknowledges that he failed to oversee the billing of the services he performed in an appropriate manner.
9. Dr. McCulloch also admits and acknowledges that he billed using a code for complicated extractions (code 71201) without sufficient justification. Code 71201 is the billing code applicable to extractions using a surgical approach requiring the use of a surgical flap and/or sectioning of a tooth.
10. Dr. McCulloch admits and acknowledges that he submitted claims using code 71201 where his chart notations did not indicate that he had used a surgical flap or sectioned a tooth:
 - (a) R.B. (extraction completed on January 25, 2016);
 - (b) W.G. (extraction completed on April 1, 2017);
 - (c) A.L. (extraction completed on July 2, 2016);
 - (d) A.M. (extraction completed on March 8, 2017);
 - (e) J.R. (extraction completed on April 23, 2016); and
 - (f) P.T. (extraction completed on November 12, 2016).
11. Dr. McCulloch admits that he used code 71201 for the removal of residual tooth roots, which is not the appropriate code for this treatment. Instead, he should have used the appropriate codes for root removal which are 72311, 72321 or 72331:
 - (a) G.A. (residual root removed completed on March 5, 2016);
 - (b) C.B. (residual root removed completed on November 16, 2016);
 - (c) M.C. (residual root removed completed on July 13, 2016);
 - (d) W.L. (residual root removed completed on July 16, 2016); and
 - (e) D.R. (residual root removed completed on February 11, 2017).

12. Dr. McCulloch admits that, for patient P.M.1 on January 14, 2017, he used code 71201 for the removal of an implant, which is not the appropriate code for this treatment. Instead, he should have used the appropriate codes for implant removal which are 79961 or 79962.
13. Dr. McCulloch acknowledges that his office submitted accounts for the patients set out above in paragraphs 6, 10 and 11 and as set out in the Notice of Hearing that he ought to have known were false and misleading and that his office issued accounts that he ought to have known contained false, misleading and improper statements, and in submitting these accounts, he charged a fee that was excessive and unreasonable in relation to the services he performed.
14. Therefore, Dr. McCulloch admits that he committed acts of professional misconduct contrary to paragraph 33 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 1 of the Notice of Hearing, section 28 of Section 2 of the Dentistry Act Regulation as set out in Allegation 2 of the Notice of Hearing, and section 31 of Section 2 of the Dentistry Act Regulation as set out in Allegation 3 of the Notice of Hearing.

General

15. Dr. McCulloch admits that the acts described above constitute professional misconduct and he has from the outset of this matter accepted full responsibility for his actions and the resulting consequences.
16. Dr. McCulloch has not practised dentistry since December, 2019.
17. Dr. McCulloch now intends to formally resign in writing.
18. Dr. McCulloch has had the opportunity to take independent legal advice with respect to his admissions.

DECISION

Having considered the evidence and submissions of the parties, the Panel found that the Member committed professional misconduct as alleged in the Notice of Hearing.

REASONS FOR DECISION

The Member pled guilty to all the allegations set out in the Notice of Hearing and did not dispute the facts presented in the Agreed Statement of Facts.

The Panel is of the view that the evidence contained in the Agreed Statement of Facts substantiates the allegations against the Member on a balance of probabilities, and supports the Panel's finding that he engaged in acts of professional misconduct as alleged in the Notice of Hearing.

More specifically, with respect to allegation 1, the Panel has found that Dr. McCulloch submitted accounts for multiple patients for dental services that he knew or ought to have known to be false or misleading, in that for each patient he completed grafts in conjunction with extractions or implants, but his office billed the extractions/implants and grafts on different dates in order to obtain reimbursement for both.

For similar reasons, the Panel found with respect to allegation 2 that Dr. McCulloch signed or issued certificates, reports or similar documents that he knew or ought to have known to be false, misleading or improper when his office submitted bills indicating that the grafts and extractions/implants had been performed on different dates, when in fact they were performed on the same dates. In further support of findings on allegations 1 and 2, the evidence established that Dr. McCulloch's office used billing codes for complicated extractions, when chart notations did not indicate that complicated extractions were performed.

With respect to allegation 3, by submitting false or misleading accounts that did not reflect the procedures performed, Dr. McCulloch charged fees for multiple patients that were excessive or unreasonable and also circumvented the billing policies of the patients' insurer.

As the regulated professional and billing professional, Dr. McCulloch bore ultimate responsibility for any and all billings submitted on his behalf, and to ensure that such billings were accurate. In the Agreed Statement of Facts Dr. McCulloch admits and acknowledges his responsibilities in this regard. Dr. McCulloch failed to exercise proper oversight of the billing practices of his receptionist/administrator, which practices were committed on Dr. McCulloch's behalf. Accordingly, Dr. McCulloch admits and acknowledges that he committed acts of professional misconduct contrary to paragraphs 28, 31 and 33 of Section 2 of the Dentistry Act Regulation.

The Panel found that in all the circumstances of this case, and on the basis of the facts as alleged in the Notice of Hearing and set out in the Agreed Statement of

Facts, Dr. McCulloch is guilty of professional misconduct as alleged, and as he has admitted to and acknowledged.

PENALTY SUBMISSIONS

The parties presented the Panel with a Joint Submission with respect to Penalty and Costs (Exhibit 4), which reads as follows.

The Royal College of Dental Surgeons of Ontario (“College”) and Dr. Christopher McCulloch (“the Member”) jointly submit that, as a result of the Panel’s finding that the Member is guilty of professional misconduct and the Member’s resignation and his signed Undertaking for permanent resignation (Appendix “A”), this Panel of the Discipline Committee impose the following penalty on the Member, namely, that it make an order:

1. Requiring the Member to appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
2. Directing the Registrar to impose the following term, condition and limitation on the Member’s certificate of registration:
 - a. the Member will notify his employer(s) of the decision. To comply, the Member is required to:
 - i. provide a copy of the Notice of Hearing, the Agreed Statement of Facts, this Joint Submission and its Appendix A, and the Panel’s Order, within 14 days of the date of this Order, and the Panel’s Decision and Reasons within 14 days of its release, and
 - ii. request that the Member’s employer(s) forward(s) a report to the Registrar, in which it will confirm that they received a copy of the required documents.
3. That the Member pay costs to the College in the amount of \$3,000.00, in respect of this discipline hearing, such costs to be paid in full within three (3) months of this Order becoming final.

As referenced in the preamble to the Joint Submission, the Member resigned his certificate of registration and signed an Undertaking of permanent resignation, which was attached to the Joint Submission as Appendix “A”. The Undertaking provides (in relevant part) as follows:

WHEREAS a panel of the Inquiries, Complaints and Reports Committee referred specified allegations of professional misconduct to the Discipline Committee in a Notice of Hearing dated May 11, 2021, which are pending before the Discipline Committee;

AND WHEREAS I have advised the College that I have retired and that I have no intention of returning to the practice of dentistry;

AND WHEREAS I am not working as a dentist, I wish to resign my membership with the College and never practise dentistry again in Ontario or in any other jurisdiction, and I have submitted a resignation form to the College;

AND WHEREAS I am currently employed by the University of Toronto, but do not require a certificate of registration for my position;

AND WHEREAS in consideration of my permanent resignation and my guilty plea to the allegations of professional misconduct, I understand that the College will seek a reprimand as a penalty in respect of the findings of professional misconduct and a requirement that I provide a copy of documents relevant to the disciplinary proceeding to my employer(s), in addition to an order for costs payable to the College in the amount of \$3,000.00.

NOW THEREFORE, I, Dr. Christopher McCulloch, do hereby undertake and agree as follows:

1. to resign my membership with the College, effective immediately, thus relinquishing my certificate of registration;
2. never to practise dentistry again in the province of Ontario or in any other jurisdiction;
3. not to apply to the College or to any other dental regulatory authority at any time for reinstatement of my certificate of registration (license);
4. not to apply or re-apply to the College or to any other dental regulatory authority at any time for a new certificate of registration (license).

I FURTHER CONFIRM, ACKNOWLEDGE AND AGREE that:

5. Pursuant to section 23 of the Health Professions Procedural Code and section 28 of the College's by-laws, I understand and agree that the Register of the College will indefinitely include a notation of the terms set out in clauses (1) through (4) above and

a notation that I have agreed to resign during a proceeding before the Discipline Committee in addition to any other information that is required to be posted.

6. By permanently resigning as a member of the College, I will no longer have a right to:
 - (a) the issuance or reinstatement of a Certificate of Registration from the College;
 - (b) to hold myself out in Ontario as a Dentist, Registered Dentist or as a person who is qualified to practise in Ontario as a Dentist; and/or
 - (c) to engage in the practice of dentistry in Ontario in any capacity;
7. The College is authorized to and may, in its sole discretion, provide a copy of this Undertaking and/or its terms to the University of Toronto, and/or a governing body that regulates dentistry in Canada or elsewhere in response to an inquiry or otherwise.
8. The Panel is not obliged to accept any agreement entered into between the College and myself, including any order that we jointly request.
9. I shall be solely responsible for payment of all fees, costs, charges, expenses, etc., if any, arising from the implementation of any of the provisions of this Undertaking.
10. I give my irrevocable consent to the College to make appropriate enquiries of any person who or institution that may have relevant information, in order for the College to monitor my compliance with the provisions of this Undertaking.

PENALTY DECISION

The Panel accepted the Joint Submission with respect to Penalty and Costs and made the following order (the “Order”):

1. The Member shall appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar.
2. The Registrar is directed to impose the following term, condition and limitation on the Member's certificate of registration:
 - a. the Member will notify his employer(s) of the decision. To comply, the Member is required to:
 - i. provide a copy of the Notice of Hearing, the Agreed Statement of Facts, this Joint Submission and its Appendix A, and the Panel's Order, within 14 days of the date of this Order, and the Panel's Decision and Reasons within 14 days of its release, and
 - ii. request that the Member's employer(s) forward(s) a report to the Registrar, in which it will confirm that they received a copy of the required documents.
3. The Member shall pay costs to the College in the amount of \$3,000.00, in respect of this discipline hearing, such costs to be paid in full within three (3) months of this Order becoming final.

REASONS FOR PENALTY DECISION

The Panel concluded that the proposed penalty was within the acceptable range in all the circumstances of this case. In making this decision, the Panel looked for guidance to *R. v. Anthony-Cook*,¹ a decision of the Supreme Court of Canada from 2016. There, Mr. Justice Moldaver, speaking for the Court, summed up the law with respect to joint submissions on penalty as follows:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. ...

...[A] joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly

¹ 2016 SCC 43.

out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”.²

The threshold for disregarding a joint submission on penalty is high and a joint submission should not lightly be rejected.³ The Panel followed this approach in its consideration of the Joint Submission with respect to Penalty and Costs.

The Panel is of the view that the sentence proposed jointly by the parties would not be contrary to the public interest, having regard to the objectives of penalty and the circumstances of the case. The Panel has therefore accepted the Joint Submission and ordered that its terms be implemented.

Dr. McCulloch’s permanent resignation of his certificate of registration provides public protection, as he will not longer provide dental services to the public. The paramount remaining objective in this case is general deterrence. The Panel is satisfied that Dr. McCulloch’s resignation, and the recording of these results on the College register will send a clear message to the members of the profession that failure to provide proper oversight of billings to one’s staff can lead to findings of professional misconduct as described above.

Given that Dr. McCulloch remains in a teaching position at the University of Toronto, the terms, conditions and limitations imposed on his certificate of registration will provide additional protection to the public. Dr. McCulloch is required to notify his employers of this decision, and to request that his employers provide the College with confirmation of receipt of the enumerated hearing documents upon being provided with them.

With respect to mitigating factors, the Panel considered the following factors:

- a) The Member has had a long and distinguished career and through his work, has contributed to significant research and development in dentistry;
- b) The Member has never before appeared before a panel of the Discipline Committee of the RCDSO;
- c) The Member has not practised dentistry since December 2019;

² *Ibid*, at paras 32-33.

³ *Ibid*, para 34.

- d) Since December 2020, the Member no longer teaches dental students; his teaching is restricted to medical students, students enrolled in the Faculty of Arts and Sciences and doctoral candidates at the University of Toronto;
- e) Upon learning of the complaint by GSC, he took action immediately: he fired his receptionist, who had committed the improper billing with respect to Dr. McCulloch's practice, and he made full restitution to GreenShield;
- f) Upon learning of the complaint by GSC, Dr. McCulloch admitted and acknowledged that as the regulated professional and billing professional, he was responsible for ensuring that all claims for services he performed were accurate, and he further admitted and acknowledged that he failed to oversee the billing of the services he performed in an appropriate manner and that such acts as described above constituted professional misconduct. He accepted full responsibility for his actions and the resulting consequences; and
- g) Dr. McCulloch pled guilty which avoided the need for a lengthy and more expensive hearing.

The Panel is satisfied that all the goals of a Penalty Order have been met and that the public and members of the profession, including dental students, will be adequately protected.

Dr. McCulloch also agreed to pay \$3,000.00 to the College by way of reimbursement for a portion of its legal costs and the costs of the hearing. The Panel accepts that this agreed-upon amount for costs is reasonable in the circumstances.

At the conclusion of the hearing, the Member waived his right to appeal this Decision on liability and penalty. The panel delivered its reprimand, a copy of which is attached hereto as Appendix "A".

THE REPRIMAND

At the conclusion of the discipline hearing, the panel delivered the reprimand to the Member. A copy of the reprimand is attached as Appendix "A" to these Reasons.

I, Judy Welikovitch, sign these Reasons for Decision as Chairperson of this Discipline Panel.



December 6, 2021

Judy Welikovitch

Date

Appendix "A"

RCDSO v. DR. CHRISTOPHER McCULLOCH

Dr. McCulloch, as you know, this Discipline panel has ordered you be given an oral reprimand as part of the sanction imposed upon you. The reprimand should impress upon you the seriousness of your misconduct.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

You will be given an opportunity to make a statement at the end of the reprimand if you wish.

The panel has found that you engaged in multiple acts of professional misconduct. The misconduct related to deficient record-keeping and poor practice oversight. Specifically, during the years 2015 – 2017:

- a. You submitted accounts for multiple patients for dental services that you knew or ought to have known to be false or misleading;
- b. You signed or issued certificates, reports or similar documents that you knew or ought to have known to be false, misleading or improper; and
- c. You charged fees that were excessive or unreasonable in relation to the services performed relative to multiple patients treated.

Your professional misconduct is a matter of concern. It is unacceptable to your fellow dentists and to the public.

Of special concern to us is the fact that the professional misconduct in which you engaged involved multiple patients over the period 2015 - 2017 and that you failed to exercise proper oversight of the billing practices of your receptionist/administrator, which practices were committed on your behalf.

We acknowledge that you have voluntarily and permanently resigned your certificate of registration with the College. We further acknowledge that you promptly implemented mitigating measures upon being made aware of the misconduct.