

21-0912

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. SALIM KAPADIA**, 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 May 4, 2022, 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.

A handwritten signature in blue ink, appearing to read "Judy Welikovitch", is enclosed in a light grey rectangular box.

Judy Welikovitch, Chair
Discipline Panel

May 4, 2022

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. SALIM KAPADIA** 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*, R.S.O. 1990, c. S.22, as amended (“Statutory Powers Procedure Act”)

Members in Attendance: Ms. Judy Welikovitch, Chair
Dr. Margaret Maggisano
Dr. Paul Jackson

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO	)	Appearances:
)	
	)	Brian Gover
	)	Independent Counsel for the
	)	Discipline Committee of the Royal
	)	College of Dental Surgeons of Ontario
- and -)	
	)	Megan Shortreed
	)	For the Royal College of Dental
	)	Surgeons of Ontario
)	
DR. SALIM KAPADIA	)	Gary SrebroLOW
	)	For the Member, Dr. Salim Kapadia
)	

Hearing held by way of videoconference on May 4, 2022.

REASONS FOR DECISION

[1] 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 May 4, 2021. This matter was heard electronically.

[2] At the outset of the hearing, the College sought an order banning the publication or broadcasting of 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. 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

[3] The allegations against Dr. Salim Kapadia (the “Member”) were contained in the Notice of Hearing, dated November 24, 2021 (Exhibit 1). It was alleged that the Member committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (the “Code”) in that, during the year(s) 2016 and 2017, he:

1. submitted an account or charge for dental services that he knew or ought to have known was false or misleading relative to one of his patients, namely N.M., contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Allegation 1”);
2. submitted an account or charge for dental services that he knew or ought to have known was false or misleading relative to one of his patients, namely N.M., contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Allegation 2”); and
3. failed to keep records as required by the Regulations relative to one of his patients, namely N.M., contrary to paragraph 25 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Allegation 3”).

[4] Seven identical particulars were provided for each of Allegations 1 and 2. With the Member's consent, counsel for the College sought to withdraw the third, fourth, and fifth particulars in relation to both of those allegations.¹ The College was permitted to do so through the exercise of prosecutorial discretion. The single particular provided in relation to Allegation 3 was unaffected.

THE MEMBER'S PLEA

[5] The Member admitted the three allegations of professional misconduct as set out in the Notice of Hearing, marked as Exhibit 1, save for those particulars in relation to Allegations 1 and 2 that the College withdrew. The effect of this was that the Member admitted Allegations 1 and 2, each with the first, second, sixth, and seventh particulars, and Allegation 3 with the single particular provided in relation to it.²

[6] A written Plea Inquiry dated April 29, 2022 and witnessed by the Member's counsel was filed as Exhibit 2. On the basis of the Member's responses to the questions contained within it, the Panel was satisfied that the Member's admissions of professional misconduct were voluntary, informed, and unequivocal.

¹ Those particulars were as follows:

- You submitted a dental insurance claim for a restoration (tooth 11 BIL) for December 14, 2016. It does not appear that tooth 11 was treated on the date in question; the patient's natural tooth 11 was already missing on that date and there was a dental implant in the site.
- You submitted a dental insurance claim for a restoration (tooth 14 BLO) for December 14, 2016. It does not appear that tooth 14 was treated on the date in question; it was already missing.
- You submitted a dental insurance claim for a bridge on December 30, 2016 before the bridge was cemented on January 13, 2017. In doing so, you submitted a claim for services that had not been provided.
- With respect to the December 30, 2016 dental insurance claim for a bridge, you submitted a claim for two pontics when the final bridge only had one pontic. After cementing the bridge on January 13, 2017, you did not alert the dental insurer of this discrepancy in the earlier insurance submission.

² That particular was as follows:

- You provided information to the College stating that you restored the patient's teeth 33, 32, 31, 41, 42 and 43 on April 10, 2017; however, you did not make a record in the patient's chart of these restorations being performed for the patient on or around April 10, 2017.

THE EVIDENCE

[7] On consent of the parties, the College introduced into evidence an Agreed Statement of Facts (Exhibit 3) which substantiated the allegations. The Agreed Statement of Facts provided as follows:³

Background

1. Dr. Kapadia (the “Member”) has been registered with the Royal College of Dental Surgeons (the “College”) as a general dentist since 2009.
2. At all relevant times, he worked as a dentist at his own practice located on Markham Road in Scarborough.
3. Dr. Kapadia has no discipline history with the College.

The Notice of Hearing

4. The allegations of professional misconduct against the Member are set out in the Notice of Hearing dated November 24, 2021.
5. The College and the Member have agreed to resolve the allegations on the basis of the facts and admissions set out below.

Withdrawals and Pleas

6. The College is not proceeding with respect to particulars 3, 4 and 5 of Allegation 1, or particulars 3, 4 and 5 of Allegation 2.
7. Accordingly, with leave of the Discipline Committee, the College withdraws these particulars.
8. Further, Dr. Kapadia only pleads to the remaining particulars of the allegations as detailed below.

Facts and Admissions

9. The facts giving rise to the allegations in the Notice of Hearing came to the attention of the College through a complaint received on November 12, 2018 from Ms. Karen Da Silva, Fraud Risk Management at Sun Life. Ms. Da Silva’s complaint alleged that anomalous billing patterns were occurring from the office of the Member.

³ The were two attachments to the Agreed Statement of Facts (Exhibit 3) as filed: the Notice of Hearing (which became Exhibit 1 at the hearing) and the Inquiries, Complaints and Reports Committee’s October 20, 2021 decision, referring the specified allegations that became Allegations 1, 2 and 3 to Discipline.

10. On November 21, 2018, two College investigators, Ms. Sinead Earley and Ms. Anna Gatova, attended the office of Dr. Kapadia. During the attendance, Ms. Earley and Ms. Gatova spoke with Dr. Kapadia, collected the records for N.M. (the “Patient”), and took photographs of the appointment schedules pertaining to the dates on which the Patient attended the office.
11. On December 11, 2018, the College received additional records, including typed transcripts, for the Patient.
12. The College provided a copy of the Registrar’s Report dated March 1, 2021, which included an analysis of patient records obtained during the investigation, to Dr. Kapadia.
13. Dr. Kapadia provided submissions to the Inquiries, Reports and Complaints Committee (the “ICRC”) on April 8, 2021.
14. On June 25, 2021, the College disclosed the record of investigation to Dr. Kapadia. On June 29, 2021, Dr. Kapadia responded to the record of investigation advising that he had no further comments or submissions.
15. On September 15, 2021, the College sent a letter to Dr. Kapadia indicating that the ICRC intended to refer specified allegations of professional misconduct to the Discipline Committee. On October 8, 2021, Dr. Kapadia provided submissions in response to the intention letter.
16. The ICRC issued its decision on October 20, 2021, referring specified allegations of professional misconduct to the Discipline Committee.
 - A. *Allegations 1 and 2: False, Misleading or Improper Statements and Accounts in Relation to Treatment Not Performed as Claimed*
17. The College’s investigation identified several instances in which Dr. Kapadia billed and claimed for procedures for the Patient, but which do not appear to have been performed based on the chart and the radiographs.
18. Specifically, Dr. Kapadia admits that he made false, misleading, or improper statements or filed false or misleading accounts, with respect to the following claims submitted in relation to treatment not performed:
 - a. Claim for restoration (tooth 11 BIL) for the Patient on December 14, 2016: Dr. Kapadia did not treat tooth 11 on the date in question, as the Patient’s natural tooth 11 was already missing on that date and there was a dental implant in the site;

- b. Claim for restoration (tooth 14 BLO) for the Patient on December 14, 2016: Dr. Kapadia did not treat tooth 14 on the date in question, as it was already missing;
- c. Claim for bridge for the Patient on December 30, 2016: Dr. Kapadia made a claim for payment before the bridge was cemented on January 13, 2017;
- d. Claim for bridge for the Patient on December 30, 2016: Dr. Kapadia claimed for two pontics when the final bridge only had one pontic. After cementing the bridge on January 13, 2017, Dr. Kapadia did not alert the dental insurer of this discrepancy in the earlier insurance claim.

19. Therefore, Dr. Kapadia admits that he:

- a. signed or issued a certificate, report, or similar document that he knew or ought to have known contained a false, misleading, or improper statement, contrary to paragraph 28 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 1 of the Notice of Hearing; and
- b. submitted an account or charge for dental services that he knew or ought to have known was false or misleading, contrary to paragraph 33 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 2 of the Notice of Hearing.

B. Allegation 3 – Failure to Keep Records as Required

- 20. The College’s investigation identified recordkeeping violations with respect to the Patient’s file. In particular, Dr. Kapadia admits that he failed to keep records as required in that he provided information to the College stating that he restored the Patient’s teeth 33, 32, 31, 41, 42 and 43 on April 10, 2017; however, he did not make a record in the Patient’s chart of these restorations being performed for the Patient on or around April 10, 2017.
- 21. Dr. Kapadia acknowledges that he breached his professional, ethical, and legal responsibilities that required him to maintain a complete record documenting all aspects of each patient’s dental care, per the College’s *Dental Recordkeeping Guidelines*, and s. 38 of *Regulation 547*.
- 22. Therefore, Dr. Kapadia admits that he failed to keep records as required by the Regulations relative to the Patient, contrary to paragraph 25 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 3 of the Notice of Hearing.

Member’s Remediation

- 23. The College has been provided with evidence that the Member has completed the following courses prior to the discipline hearing:

- a. Ontario Dental Association “Dental Recordkeeping – Back to Basics” (March 2019);
- b. British Columbia “Dental Recordkeeping – Back to Basics” (December 2018); and
- c. Ontario Dental Association “Suggested Fee Guide and Dental Plans: Best Practices” (January 11, 2022).

General

24. Dr. Kapadia admits that the acts described above constitute professional misconduct and he accepts responsibility for his actions and the resulting consequences.
25. Dr. Kapadia has had the opportunity to take independent legal advice with respect to his admissions.

FINDINGS OF PROFESSIONAL MISCONDUCT

[8] After deliberation, the Panel made findings of professional misconduct in relation to Allegations 1, 2 and 3, with the proviso that the third, fourth and fifth particulars set out in Allegations 1 and 2 were withdrawn by the College.

REASONS FOR FINDINGS OF PROFESSIONAL MISCONDUCT

[9] In making the findings of professional misconduct, the Panel acted on the Member’s plea, the facts set out in the Agreed Statement of Facts (Exhibit 3) and the specific admissions contained within it. The Panel noted that the Agreed Statement of Facts (Exhibit 3) constituted the evidence before it for the purposes of s. 49 of the Code, which provides that the findings of a panel shall be based exclusively on evidence admitted before it.

PENALTY SUBMISSIONS

[10] The parties presented the Panel with a Joint Submission on Penalty and Costs (the “Joint Submission”, Exhibit 4), which provided as follows:

WHEREAS this panel of the Discipline Committee has found that Dr. Salim Kapadia (the “Member”) is guilty of professional misconduct;

AND WHEREAS the Member has completed the following remedial courses: Ontario Dental Association course “Dental Recordkeeping – Back to

Basics” in March 2019; College of Dental Surgeons of British Columbia online course “Dental Recordkeeping – Back to Basics” in December 2018; and Ontario Dental Association course “Suggested Fee Guide and Dental Plans: Best Practices” in January 2022;

NOW THEREFORE the Member and the Royal College of Dental Surgeons of Ontario (the “College”) jointly submit that this panel of the Discipline Committee make the following order:

1. Requiring the Member to appear before the Panel of the Discipline Committee to be reprimanded, on the date of this Order becoming final.
2. Directing that the Registrar also impose the following additional terms, conditions, and limitations on the Member’s certificate of registration (the “Practice Conditions”), namely:
 - a. the Member shall successfully complete, at his expense, within six (6) months of this Order becoming final, a comprehensive hands-on course approved by the College, with an evaluative component, regarding record-keeping;
 - b. the Member’s practice shall be monitored by the College by means of quarterly inspection(s) by a representative or representatives of the College, during the twelve (12) months following the date this Order becomes final. The inspections will focus on the Member’s recordkeeping and billing issues;
 - c. the Member shall cooperate with the College during the inspections and, further, shall pay to the College in respect of the cost of monitoring the amount of \$1,000 per inspection, such amount to be paid immediately after completion of each inspection;
 - d. the representative or representatives of the College may report the results of the inspections to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;
 - e. the Practice Conditions imposed by virtue of clause (a) of paragraph 2 shall be removed from the Member’s certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the course has been completed successfully; and

- f. the Practice Conditions imposed by virtue of clauses (b)-(d) of paragraph 2 shall be removed from the Member's certificate of registration following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in clauses (b)-(d) above have been completed successfully, or upon receipt of written confirmation from the College that the Member has successfully completed the monitoring program, whichever date is later.
3. The Member shall pay costs to the College in the amount of \$10,000.00, payable in 24 equal monthly installments commencing on the 1st of the month following the Order becoming final and continuing on the 1st of each month thereafter.

[11] In support of the Joint Submission, College counsel referred to the key components of the jointly proposed penalty order and submitted that it addressed the goals of general deterrence, specific deterrence, and remediation.

[12] In doing so, College counsel referred to the aggravating factors (three false and misleading insurance claims were submitted, failure to take an opportunity to rectify the situation, failure to document any of the restorative process undertaken in April 2017, etc.) and the mitigating factors (this went on from December 2016 to April 2017, a relatively short period, the Member admitted his professional misconduct and was cooperative throughout the process, the Member has no complaints or discipline history and he has voluntarily undertaken remediation). It was her submission that the Member's professional misconduct is "at the lower end of the scale of professional misconduct".

[13] The Member's counsel similarly supported the Joint Submission, submitting in particular that the proposed penalty order addressed the goals of imposing a penalty in a professional discipline case and that it was appropriate in all of the circumstances of this case.

[14] In addition, the Member spoke directly to the Panel and provided information about his background and his efforts to remediate his practices.

[15] The Panel's independent counsel provided advice to the Panel about how it should approach the Joint Submission. Independent counsel reminded the Panel that the Joint Submission was the product of negotiations between experienced counsel, one (College counsel) tasked with protecting the public interest and the other (the Member's counsel) required to protect the Member's interests. Further, the Joint Submission was achieved with the benefit of a pre-hearing conference, and it was endorsed by the presiding officer at that pre-hearing conference.

Independent counsel further reminded the Panel that there is seldom one form of penalty order that is appropriate, to the exclusion of all others. Instead, there is a range of appropriate penalty orders. Finally, independent counsel summarized the law applicable to joint submissions by advising the Panel to accept the Joint Submission unless by accepting it, the Panel would bring the administration of justice into disrepute or otherwise act contrary to the public interest. It was his advice that the proposed penalty order contemplated by the Joint Submission was well within the appropriate range of penalty for this case.

PENALTY DECISION

[16] The Panel accepted the Joint Submission and ordered that:

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded, on the date of this Order becoming final.
2. The Registrar is directed to impose the following additional terms, conditions, and limitations on the Member's certificate of registration (the "Practice Conditions"), namely:
 - a. the Member shall successfully complete, at his expense, within six (6) months of this Order becoming final, a comprehensive hands-on course approved by the College, with an evaluative component, regarding record-keeping;
 - b. the Member's practice shall be monitored by the College by means of quarterly inspection(s) by a representative or representatives of the College, during the twelve (12) months following the date this Order becomes final. The inspections will focus on the Member's recordkeeping and billing issues;
 - c. the Member shall cooperate with the College during the inspections and, further, shall pay to the College in respect of the cost of monitoring the amount of \$1,000 per inspection, such amount to be paid immediately after completion of each inspection;
 - d. the representative or representatives of the College may report the results of the inspections to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;

- e. the Practice Conditions imposed by virtue of clause (a) of paragraph 2 shall be removed from the Member's certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the course has been completed successfully; and
 - f. the Practice Conditions imposed by virtue of clauses (b)-(d) of paragraph 2 shall be removed from the Member's certificate of registration following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in clauses (b)-(d) above have been completed successfully, or upon receipt of written confirmation from the College that the Member has successfully completed the monitoring program, whichever date is later.
3. The Member shall pay costs to the College in the amount of \$10,000.00, payable in 24 equal monthly installments commencing on the 1st of the month following the Order becoming final and continuing on the 1st of each month thereafter.

REASONS FOR PENALTY DECISION

[17] The panel accepts the advice offered by its Independent Legal Counsel that joint submissions on penalty and costs should not be lightly overturned; that they should be accepted by the panel unless doing so would bring the administration of justice into disrepute.

[18] The panel is satisfied that accepting the joint submission on penalty and costs will not bring the administration into disrepute. Further, the panel is satisfied that the proposed penalty is well within the appropriate range of penalty for this type of misconduct. The penalty is sufficient to meet the objectives of imposing sanctions against the Member, including general deterrence, specific deterrence, and remediation, and protection of the public interest and public confidence in the profession.

ORAL REPRIMAND ADMINISTERED

[19] At the conclusion of the hearing, the Member waived his right of appeal and indicated through counsel that he was content that the reprimand called for

by paragraph 1 of the penalty order be administered. Consequently, the Chair proceeded to administer the reprimand in the terms set out in Appendix "A".

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

A handwritten signature in blue ink, appearing to read "Judy Welikovitch", is written over a light blue rectangular background. The signature is cursive and somewhat stylized.

June 27, 2022

Date

Appendix “A” – Reprimand
RCDSO v. Dr. Salim Kapadia

Dr. Kapadia, as you know, this Discipline panel has ordered you to 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 have engaged in multiple acts of professional misconduct. The misconduct related to:

- signing or issuing a certificate, report, or similar document that you knew or ought to have known contained a false, misleading, or improper statement relative to one of your patients (Allegation #1),
- submitting an account or charge for dental services that you knew or ought to have known was false or misleading relative to the same patient (Allegation #2), and
- failing to keep records as required by the Regulations relative to that patient (Allegation #3).

Your professional misconduct is a matter of profound concern. It is completely unacceptable to your fellow dentists and to the public. You have brought discredit to the entire profession and to yourself. Public confidence in this profession has been put in jeopardy.

Of special concern to us is the fact that the professional misconduct in which you engaged has involved false claims to the patient’s insurer. Insurers rely on dentists to be completely accurate in submitting claims.

In addition, the panel is concerned about the complete absence of documentation in relation to the patient’s treatment on April 10, 2017, when restorations were performed on six (6) teeth. This was a striking failure to meet your obligations to keep complete and accurate records in relation to a patient’s treatment.

As I advised earlier, you will now be given an opportunity to make a comment if you wish to do so. This is **not** an opportunity for you to debate the merits or the correctness of the decisions we have made.

Do you have any questions or do you wish to make any comments?

(The Member made no comments at this point)

Thank you for attending today. We are adjourned.