

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

Citation: Royal College of Dental Surgeons of Ontario v. Fortino, 2024 ONRCDSO 1

Date: 2024-02-07

File No.: 22-0180

IN THE MATTER OF: A Hearing 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”)

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

BETWEEN:

Royal College of Dental Surgeons of Ontario

-and-

Dr. Joseph Anthony Fortino

FINDING AND PENALTY REASONS

RESTRICTION ON PUBLICATION

In the matter of the Royal College of Dental Surgeons of Ontario and Dr. Joseph Anthony Fortino the Discipline Panel ordered, under ss 45(3) of the Health Professions Procedural Code, that no person shall publish or broadcast the identity of any patients of the Registrant, or any information that could disclose the identity of any patients who are named in the exhibits marked at the hearing.

PANEL MEMBERS:

Ms. Judy Welikovitch, Public Member (Chair)

Dr. Nalin Bhargava, Professional Member

Dr. André Theoret, Professional Member

APPEARANCES:

Ahmad Mozaffari, for the College

Zoe Hountalas, for Dr. Fortino

Andrea Gonsalves, Independent Legal Counsel

Heard: November 22, 2023, by videoconference
Decision Date: November 22, 2023
Release of Written Reasons: February 7, 2024

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 November 22, 2023. This matter was heard electronically.

[2] At the outset of the hearing, the College sought an order that no person shall publish or broadcast the identity of any patients of the Registrant, or any information that could disclose the identity of any patients who are named in the exhibits marked at the hearing. The Registrant consented to the request. The Panel granted the order.

The Allegations

[3] The College’s allegations of professional misconduct against Dr. Fortino (the “**Registrant**” or the “**Member**”) are set out in a notice of hearing dated March 16, 2022, as follows:

- a) You 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 in that in or around the year(s) 2018 and 2019, you falsified a record relating to your practice relative to your patients, namely S.A., S.D., R.S. and L.S., contrary to paragraph 26 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars

- You or your staff (for whom you are responsible) fabricated records to support invalid claims submitted to the insurance company.
- Supplementary chart entries were fabricated to support invalid claims (S.A. – Dec 8/18, Dec 13/18, Dec 15/18, and Jan 5/19; S.D. – Nov 9/18, Dec 13/18, Dec 15/18, Dec 28/18, and Jan 2/19; R.S. – Jan 22/19, and Feb 5/19).
- Pre-operative patient radiographs were altered to support invalid claims of wisdom teeth extractions (S.A. – Dec 8/18; S.D. – Nov 9/18).

- Periodontal charting was fabricated to corroborate invalid claims for open flap debridement (S.A. – undated charting – open flap debridement Jan 5/19; and S.D. – undated charting – open flap debridement Dec 15/18).
 - A treatment report was fabricated in order to corroborate an invalid claim for a benign soft tissue tumour removal (L.S. – Feb 22/19).
- b) You 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 in that in or around the year(s) 2018 and 2019, 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 your patients, S.A., C.C., M.C.1, M.C.2, S.C., S.D., R.L., L.S., and R.S., contrary to paragraph 28 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars

- You claimed the removal of at least two wisdom teeth (codes 72211 and 72221) when these teeth were already missing (S.A – Dec 15/18 and Jan 5/19; S.C. – Nov 17/18; S.D. – Jan 2/19; R.L. – Oct 19/18; and L.S. – Feb 22/19).
 - You claimed the removal of a soft tissue tumor (code 74115) where none existed (S.D. – Dec 13/18; L.S. – Feb 22/19; and R.S. – Jan 22/19).
 - You claimed open flap debridement of an osseous defect (code 42431) where no defect existed (S.A. – Jan 5/19; C.C. – Dec 7/18; S.C. – June 2/18, Aug 10/18, Aug 22/18, Sep 21/18; S.D. – Dec 15/18; L.S. – Feb 22/19; and R.S. – Jan 22/19).
 - You claimed gingivectomies (code 42311) which were not performed (M.C.1 - Dec 7/18; M.C.2 – Oct 20/18, Nov 9/18; and L.S. – Feb 21/19).
 - You claimed an allograft (code 42621) which was not performed (L.S. – Feb 22/19).
 - You claimed root canal therapy which was not performed (L.S. – Mar 13/19, Mar 29/19, April 10/19; and R.S. – Feb 5/19).
 - You claimed multiple five-surface restorations, post-endodontic therapy, which were not performed (L.S. – Mar 13/19, Mar 29/19, Apr 10/19; and R.S – Feb 5/19).
- c) You 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 in that in or around the year(s) 2018 and 2019, you submitted an account or charge for dental services that you

knew or ought to have known was false or misleading relative to one of your patients, namely, S.A., C.C., M.C.1, M.C.2, S.C., S.D., R.L., L.S., and R.S., contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars

- You claimed the removal of at least two wisdom teeth (codes 72211 and 72221) when these teeth were already missing (S.A., – Dec 15/18 and Jan 5/19; S.C. – Nov 17/18; S.D. – Jan 2/19; R.L. – Oct 19/18; and L.S. – Feb 22/19).
- You claimed the removal of a soft tissue tumor (code 74115) where none existed (S.D. – Dec 13/18; L.S. – Feb 22/19; and R.S. – Jan 22/19).
- You claimed open flap debridement of an osseous defect (code 42431) where no defect existed (S.A. – Jan 5/19; C.C. – Dec 7/18; S.C. – June 2/18, Aug 10/18, Aug 22/18, Sep 21/18; S.D. – Dec 15/18; L.S. – Feb 22/19; and R.S. – Jan 22/19).
- You claimed gingivectomies (code 42311) which were not performed (M.C.1 – Dec 7/18; M.C.2 – Oct 20/18, Nov 9/18; and L.S. – Feb 21/19).
- You claimed an allograft (code 42621) which was not performed (L.S. – Feb 22/19).
- You claimed root canal therapy which was not performed (L.S. – Mar 13/19, Mar 29/19, April 10/19; and R.S. – Feb 5/19).
- You claimed multiple five-surface restorations, post-endodontic therapy, which were not performed (L.S. – Mar 13/19, Mar 29/19, Apr 10/19; and R.S. – Feb 5/19).

The Registrant's Plea

[4] The Registrant admitted the allegations of professional misconduct contained the Notice of Hearing. A written plea inquiry signed by the Registrant was entered into evidence at the hearing. Based on the Registrant's responses, the Panel was satisfied that his admissions were voluntary, informed, and unequivocal.

The Evidence

[5] 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 (with the documents attached to it omitted):

Background

- a) At the material times, Dr. Joseph Anthony Fortino (the "Registrant"), was a duly registered member of the Royal College of Dental Surgeons of Ontario practising at

385 Wilson Street East in Ancaster, Ontario (the “Ancaster Clinic”), which was his primary clinic. The Registrant also practised at 1-24 Dundas Street East in Mississauga, Ontario (the “Mississauga Clinic”).

- b) A copy of the Registrant’s profile from the Dentist Register is attached hereto as “**Tab 1**”.

Events giving rise to the Allegations

- c) On or about December 16, 2019, the College received a complaint from a Manulife Financial (“Manulife”) investigator regarding multiple insurance submissions for the same patients on the same service dates. The submissions were for large dollar amounts and the billing pattern and order of services rendered were deemed to be suspicious by Manulife. The services were rendered by the Registrant.
- d) Manulife obtained clinical records and radiographs for several patients from the Ancaster Clinic. Upon reviewing the records, Manulife noted discrepancies between the records provided by the Registrant and the records obtained from the patients’ prior dentists.
- e) Manulife obtained the clinical records and radiographs for Patient 1, as it had concerns regarding multiple claim submissions on the same service date. Patient 1 was listed as having received four root canal treatments on the same day. When Manulife contacted Patient 1, they advised their chief complaint was their dentures and confirmed that they had not received root canals or fillings from the Registrant.
- f) In addition to Patient 1, the Registrant and two patients he treated at the Ancaster Clinic, Patient 2, and Patient 2’s dependent, were flagged in Manulife’s quarterly reviews for 2019. The billing pattern for Patient 2 and their dependent involved multiple codes being billed simultaneously. Manulife requested supporting documentation for Patient 2 and their dependent and received clinical records and radiographs from the Registrant’s office. These were compared to the previous billings and radiographs for Patient 2 and their dependent, which had been submitted by their prior dentist. The comparison showed that the radiographs provided by the Registrant’s office were not the dentition of Patient 2 and their dependent, and that the clinical records had been altered to reflect the billings Manulife received from the Registrant.
- g) Manulife requested the records for a third patient, Patient 3, from the Registrant’s Ancaster Clinic because a frequent billing pattern had been identified. The Registrant

provided Manulife with a panoramic radiograph and a letter of expertise to support the services billed for Patient 3. Manulife subsequently obtained radiographs from Patient 3's prior dentist which showed that the records provided by the Registrant had been falsified.

- h) Manulife identified further concerns with respect to Patient 4 and Patient 5 and their dependants. With respect to Patient 4 and their two dependants, the Registrant's records and billings showed that he provided treatment to teeth which records from the prior treating dentist showed were not present at the time the treatment was purportedly provided by the Registrant. Patient 4 told Manulife in or around June 2019 that the Registrant had provided treatment consisting of "occlusal adjustment, wisdom teeth extraction and surgery to his mouth".
- i) Similarly, Manulife's concerns regarding Patient 5 included that there was a claim for treatment of teeth which did not appear to have been present based on photographs of Patient 5's dentition obtained from Dr. Fortino.
- j) Manulife contacted the Registrant on June 6, 2019 to review its concerns, at which point the Registrant admitted to submitting multiple invalid dental claims and falsifying patient records in respect of Patient 1, Patient 2, Patient 3, Patient 4 (and their dependents) Patient 5 (and their dependent). The majority of the invalid claims were submitted to cover uninsured services. The Registrant further admitted to rarely collecting co-payments from his patients. He ultimately provided Manulife with the authentic patient records.
- k) In or around August 2019, Patient 4 spoke to Manulife a second time. During this call, Patient 4 stated that they had previously provided Manulife with misleading information regarding their treatment with the Registrant. Patient 4 stated to Manulife that the Registrant prepared them for the initial interview by providing Patient 4 with the name and description of the services for the invalid dental claims for services that were not actually provided. If the Registrant were to testify, the Registrant would deny preparing or coaching Patient 4 regarding his call with Manulife.
- l) On June 26, 2019, the Registrant completed a billing report for the Ancaster Clinic listing all invalid or inflated dental claims he submitted from that office. The Registrant admitted that he had submitted a total of \$137,373.00 in invalid claims and was reimbursed \$108,442.44 for those claims. The Registrant confirmed that he submitted \$7,879 in inflated claims and was reimbursed \$4,314.67 for those claims.

- m) On August 6, 2019, the Registrant completed a billing report for the Mississauga Clinic listing all invalid or inflated dental claims submitted from that office. The Registrant admitted to submitting \$37,927.90 in invalid claims from the Mississauga Clinic and being reimbursed \$22,925.66 for those claims. He also admitted to submitting \$2,297 in inflated claims and being reimbursed \$1,912.60 for those claims. In total, the Registrant received \$137,595.37 from the unsubstantiated billing. He has repaid Manulife the full amount.

College Investigation

- n) The College obtained the relevant records in relation to the patients identified above, including the altered records, as well as Manulife's record of investigation. During the College's investigation, the Registrant acknowledged making unsubstantiated claims submissions starting in May, 2018 to in or around July 1, 2019, which was over four months after Manulife began contacting the Registrant regarding the improper billing. He stated that the process of submitting the unsubstantiated claims involved verification of the patients' insurance plans to determine if services would be covered. If it was determined that a particular service was not covered, a false claim would be submitted.
- o) The College completed its own analysis of the records provided by the Registrant and Manulife in relation to the patients identified above, which showed:
- a. **Extraction of Wisdom Teeth:** for five patients, the Registrant claimed the removal of at least two wisdom teeth when those teeth were already missing, in order to obtain reimbursement for services not covered by the patients' insurance plans (Patient 2 and their dependant, Patient 3, Patient 4 and Patient 5);
 - b. **Soft Tissue Tumour Removal:** for three patients, the Registrant claimed the removal of a soft tissue tumour when none existed (Patient 1, Patient 2's dependant and Patient 3);
 - c. **Open Flap Debridement of Osseous Defects:** for six patients, the Registrant claimed open flap debridement of an osseous defect where no defect existed (Patient 1, Patient 2 and their dependant, Patient 3 and Patient 5 and their dependant);
 - d. **Gingivectomies:** for three patients, the Registrant claimed gingivectomies when they were not performed (two of Patient 5's dependants and Patient 3);
 - e. **Allograft Placement:** for one patient, the Registrant claimed an allograft when the patient had not attended his clinic on the date in question (Patient 3);

- f. **Root Canal Therapy:** for two patients, the Registrant claimed root canal therapy (either de novo or re-treatment) when such treatment was not provided (Patient 1 and Patient 3); and
 - g. **Restorative Services Post Endodontic Therapy:** for 2 patients, the Registrant claimed multiple five-surface restorations post-endodontic therapy when they were not performed (Patient 1 and Patient 3).
- p) In addition, the Registrant's office fabricated supplementary chart entries to support the invalid claims and altered pre-operative patient radiographs to support the invalid claims of wisdom tooth extraction submitted to Manulife. The Registrant's office also fabricated periodontal charting to corroborate invalid claims for open flap debridement and fabricated a treatment report indicating a treatment date for which no corresponding appointment was documented.

Remedial Action

- q) The Registrant took remedial steps toward his practice since the Manulife investigation, including the following:
- a. The Registrant voluntarily completed the three-day CPEP PROBE Ethics Course on July 9-11, 2020 with an unconditional pass;
 - b. The Registrant underwent eight coaching sessions with a professional ethics coach in 2020 and 2022;
 - c. The Registrant completed the University of Toronto, Faculty of Dentistry course "Cybersecurity and Maintaining the Integrity of Digital Patient Records;"
 - d. The Registrant completed the American Dental Assistants Association course "The Business of Dentistry — Patient Records and Record Management;"
 - e. The Registrant completed the Ontario Dental Association's course "The ODA Suggested Fee Guide and Dental Plans: Best Practices;"
 - f. The Registrant completed the American Dental Association's program "Conscious and Unconscious Bias in Dental Practice Ethical Considerations;" and
 - g. The Registrant completed The Academy of Dental Learning course "Basic Ethics in Dentistry."

Professional Misconduct Admitted

- r) It is admitted that in or around the years 2018 and 2019, the Registrant falsified records relating to his practice relative to multiple patients and their dependants, as outlined above.
- s) It is admitted that in or around the years 2018 and 2019, the Registrant signed or issued a certificate, report, or similar document he knew or ought to have known contained a false, misleading, or improper statement relative to multiple patients and their dependants, as outlined above.
- t) It is admitted that in or around the years 2018 and 2019, the Registrant submitted an account or charge for dental services that he knew or ought to have known was false or misleading relative to multiple patients and their dependants, as outlined above.
- u) The Registrant admits and acknowledges that his conduct described above constitutes professional misconduct pursuant to Section 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 and as defined in the following paragraphs of section 2 of *Ontario Regulation 853*, Regulations of Ontario, 1993, as amended:
 - a. Paragraph 26 (falsifying a record relating to the member's practice);
 - b. Paragraph 28 (signing or issuing a certificate, report, or similar document that the member knows or ought to know contains a false, misleading, or improper statement); and
 - c. Paragraph 33 (submitting an account or charge for dental services that the member knows is false or misleading).

Decision

[6] Having considered the evidence and submissions of the parties, the Panel found that the Registrant committed professional misconduct as set out in Notice of Hearing (Exhibit 1).

Reasons for Decision

[7] The Panel reviewed and accepted the admissions of misconduct made by the Registrant in the Agreed Statement of Facts and in his Plea Inquiry. Together with the Registrant's admissions, the Agreed Statements of Facts provided clear, cogent and convincing evidence to prove the allegations.

[8] For the reasons set out in the following paragraphs, the Panel finds that Dr. Fortino engaged in professional misconduct in that, in or around the years 2018 and 2019:

- a) he falsified records relating to multiple patients contrary to paragraph 26 of Section 2 of Ontario Regulation 853/93, as amended;
- b) he signed or issued a certificate, report, or similar document that he knew or ought to have known contained false, misleading, or improper statements relative to multiple patients, contrary to paragraph 28 of Section 2 of Ontario Regulation 853/93, as amended; and
- c) he submitted accounts or charges for dental services for multiple patients that he knew or ought to have known were false or misleading, contrary to paragraph 33 of Section 2 of Ontario Regulation 853/93, as amended.

[9] In reaching these findings, the Panel relied upon the agreed facts, the admissions by Dr. Fortino contained in the Agreed Statement of Facts, the submissions of counsel for the parties and the advice of its own Independent Legal Counsel. More particularly, the Panel found that there was sufficient evidence to substantiate the allegations, as follows.

[10] Allegation a: ***Falsifying Records Relating to Multiple Patients*** [contrary to paragraph 26 of Section 2 of Ontario Regulation 853, Regulations Ontario, 1993, as amended].

Specifically,

- a. Dr. Fortino or his staff fabricated records to support invalid claims that were submitted to Manulife;
- b. Dr. Fortino or his staff created supplementary chart entries to support the invalid claims that had been submitted to Manulife;
- c. Dr. Fortino caused pre-operative patient radiographs to be altered to support invalid insurance claims for the extraction of wisdom teeth;
- d. Dr. Fortino fabricated periodontal charting to corroborate invalid insurance claims for open flap debridement; and
- e. Dr. Fortino fabricated a treatment report in order to corroborate an invalid insurance claim for a benign soft tissue tumour removal.

[11] Allegation b: ***Signing or Issuing a Certificate, Report or Similar Document that he Knew or Ought to Have Known Contained False, Misleading or Improper Statements***

Relative to Multiple Patients [contrary to paragraph 28 of Section 2 of Ontario Regulation 853/93, as amended]. Specifically,

- a. Dr. Fortino claimed the removal of at least two wisdom teeth for five (5) patients when those teeth were already missing, in order to obtain reimbursement from the patients' insurer for services that were not covered by that insurer;
- b. Dr. Fortino claimed the removal of a soft tissue tumour for three (3) patients where none existed;
- c. Dr. Fortino claimed that he had performed an open flap debridement of an osseous defect for six (6) patients where no defect existed;
- d. Dr. Fortino claimed that he had performed gingivectomies for three (3) patients when they were not performed;
- e. Dr. Fortino claimed that he had performed an allograft placement for one (1) patient when the records established that the patient had not attended his clinic on the date in question;
- f. Dr. Fortino claimed that he had performed root canal therapy on two (2) patients when such treatment was not provided; and
- g. Dr. Fortino claimed that he had performed multiple five-surface restorations post endodontic therapy for two (2) patients when they were not performed.

[12] Allegation c: **Submitting an Account for Dental Services that Dr. Fortino Knew or Ought to have Known was False or Misleading** [contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Ontario Regulations 1993, as amended]. Specifically,

- a. Dr. Fortino claimed that he had removed at least two (2) wisdom teeth when these teeth were already missing;
- b. Dr. Fortino claimed the removal of a soft tissue tumour for three (3) patients where no tumour existed;
- c. Dr. Fortino claimed that he had performed an open flap debridement of an osseous defect for six (6) patients where no defect existed;
- d. Dr. Fortino claimed that he had performed gingivectomies for three (3) patients when they were not performed;

- e. Dr. Fortino claimed that he had performed an allograft placement for one (1) patient which was not performed;
- f. Dr. Fortino claimed that he had performed root canal therapy on two (2) patients when such treatment was not provided; and
- g. Dr. Fortino claimed that he had performed multiple five-surface restorations post endodontic therapy for two (2) patients when they were not performed.

Penalty Submissions

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

- a) The Royal College of Dental Surgeons of Ontario ("College") and Dr. Joseph Anthony Fortino ("the Member") jointly submit that this panel of the Discipline Committee impose the following penalty on the Member as a result of the panel's finding that the Member is guilty of professional misconduct, namely, that it makes an order:
 - a. 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;
 - b. directing the Registrar to suspend the Member's certificate of registration for a period of four (4) months, commencing November 23, 2023 at 12:01 am. The suspension shall run without interruption;
 - c. that the Registrar impose the following terms, conditions, and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the Member's certificate of registration as referred to in paragraph 1(b) above has been fully served:
 - (i) while the Member's certificate of registration is under suspension, the Member shall immediately inform the following people about the suspension:
 - staff in the offices or practices in which the Member works, including other regulated professionals and administrative staff;
 - dentists with whom the Member works, whether the Member is a principal in the practice or otherwise associated with the practice;
 - dentists or other individuals who routinely refer patients to the Member;

- faculty members at Faculties of Dentistry, if the Member is affiliated with the Faculty in an academic or professional capacity;
 - owners of a practice or office in which the Member works;
 - patients who ask to book an appointment during the suspension, or who previously booked appointment has been rescheduled due to the suspension. The Member may assign administrative staff to inform patients about the suspension. All communications with patients must be truthful and honest;
- (ii) while suspended, the Member must not engage in the practice of dentistry, including but not limited to:
- acting in any manner that suggests the Member is entitled to practice dentistry. This includes communicating diagnoses or offering clinical advice in social settings. The Member must ensure that administrative or office staff do not suggest to patients in any way that the Member is entitled to engage in the practice of dentistry;
 - giving orders or standing orders to dental hygienists;
 - supervising work performed by others;
 - working in the capacity of a dental assistant or performing laboratory work;
 - acting as a clinical instructor;
- (iii) while suspended, the Member must not be present in offices or practices where the Member works when patients are present, except for emergencies that do not involve patients. The Member must immediately advise the Registrar in writing about any such emergencies;
- (iv) while suspended, the Member must not benefit or profit, directly or indirectly from the practice of dentistry
- The Member may arrange for another dentist to take over their practice during the suspension period. If another dentist assumes the practice, all of the billings of the practice during the suspension period belong to that dentist. The Member may be reimbursed for actual out-of-pocket expenses incurred in respect of the practice during the suspension period;
 - The Member is permitted to sign and/or submit insurance claims for work that was completed prior to the suspension;
 - The Member must not sign insurance claims for work that has been completed by others during the suspension period;

- (v) the Member shall cooperate with any office monitoring which the Registrar thinks is needed to ensure that the Member has complied with the Suspension Conditions. The Member must provide the College with access to any records associated with the practice that the College may require to verify that the Member has not engaged in the practice of dentistry or profited during the suspension; and
 - (vi) the Suspension Conditions imposed by virtue of subparagraphs 1(c)(i)-(v) above shall be removed at the end of the period that the Member's certificate of registration is suspended.
- d. directing that the Registrar also impose the following additional terms, conditions, and limitations on the Member's Certificate of Registration (the "Practice Conditions"), which are to be completed at the Member's expense, namely:
- (i) the Member is to complete a record-keeping course approved by the College within six (6) months of the date of the Panel's order;
 - (ii) the Member is to complete a billings course approved by the College within six (6) months of the date of the Panel's order;
 - (iii) the Member is to provide proof, acceptable to the Registrar, of successful completion (i.e., an unconditional pass) of the PROBE course;
 - (iv) the Member is to complete 1:1 ethics instruction with a College-approved instructor within six (6) months of the date of the Panel's order. The College will provide the Notice of Hearing, Agreed Statement of Facts, Joint Submission on Penalty, and the Discipline Committee's reasons in the within matter to the instructor. The Member will provide the PROBE Program Evaluation and Assessment Report dated August 6, 2020 to the instructor before the ethics instruction begins. Prior to instruction commencing, the instructor will provide to the College the educational objectives for the instruction in writing for approval by the College.

Practice Monitoring

- (v) the Member shall retain a practice monitor acceptable to the College who shall meet with the Member during the twenty-four (24) months immediately following the date the Member returns to practice after serving the suspension referred to in paragraph 1(b) above. The practice

monitoring shall focus on the Member's record-keeping and billing practices. For the first twelve (12) months, the Member shall meet with the practice monitor at least quarterly. For the final twelve (12) months, the Member shall meet with the practice monitor semi-annually.

Compliance Monitoring

- (vi) the Member shall inform the College of each and every location at which he practices ("Practice Locations") within five (5) days of commencing practice at that location;
 - (vii) the Member agrees to submit to and not interfere with unannounced inspections by a College representative of his Practice Locations to confirm his compliance with this Order;
 - (viii) the Member shall cooperate with the College during these unannounced inspections and further, shall pay to the College in respect of the costs of the inspections, the amount of \$1,000.00 per office inspection, such amount to be paid immediately after completion of each of the office inspection;
 - (ix) the representative or representatives of the College may report the results of those office inspections to the Inquiries, Complaints and Reports Committee (ICRC) of the College and the ICRC may, if deemed warranted, take such action as it considers appropriate;
- e. that the Member pay costs to the College in the amount of \$10,000.00 within thirty (30) days of the date of this order.
- b) The College and the Member further submit that pursuant to the Code, as amended, the results of these proceedings must be recorded on the Register of the College and any publication of the Decision of the panel would therefore occur with the name and practice address of the Member included.

Penalty Decision

[14] The Panel accepted the Joint Submission with respect to Penalty and Costs, and made the following order (the "**Order**"):

- a) The Registrant 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;

- b) The Registrar is directed to suspend the Registrant's certificate of registration for a period of four (4) months, commencing November 23, 2023 at 12:01 am. The suspension shall run without interruption;
- c) The Registrar shall impose the following terms, conditions, and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the Registrant's certificate of registration as referred to in paragraph 1(b) above has been fully served:
- (i) while the Member's certificate of registration is under suspension, the Member shall immediately inform the following people about the suspension:
 - staff in the offices or practices in which the Member works, including other regulated professionals and administrative staff;
 - dentists with whom the Member works, whether the Member is a principal in the practice or otherwise associated with the practice;
 - dentists or other individuals who routinely refer patients to the Member;
 - faculty members at Faculties of Dentistry, if the Member is affiliated with the Faculty in an academic or professional capacity;
 - owners of a practice or office in which the Member works;
 - patients who ask to book an appointment during the suspension, or who previously booked appointment has been rescheduled due to the suspension. The Member may assign administrative staff to inform patients about the suspension. All communications with patients must be truthful and honest;
 - (ii) while suspended, the Member must not engage in the practice of dentistry, including but not limited to:
 - acting in any manner that suggests the Member is entitled to practice dentistry. This includes communicating diagnoses or offering clinical advice in social settings. The Member must ensure that administrative or office staff do not suggest to patients in any way that the Member is entitled to engage in the practice of dentistry;
 - giving orders or standing orders to dental hygienists;
 - supervising work performed by others;
 - working in the capacity of a dental assistant or performing laboratory work;
 - acting as a clinical instructor;

- (iii) while suspended, the Member must not be present in offices or practices where the Member works when patients are present, except for emergencies that do not involve patients. The Member must immediately advise the Registrar in writing about any such emergencies;
 - (iv) while suspended, the Member must not benefit or profit, directly or indirectly from the practice of dentistry
 - The Member may arrange for another dentist to take over their practice during the suspension period. If another dentist assumes the practice, all of the billings of the practice during the suspension period belong to that dentist. The Member may be reimbursed for actual out-of-pocket expenses incurred in respect of the practice during the suspension period;
 - The Member is permitted to sign and/or submit insurance claims for work that was completed prior to the suspension;
 - The Member must not sign insurance claims for work that has been completed by others during the suspension period;
 - (v) the Member shall cooperate with any office monitoring which the Registrar thinks is needed to ensure that the Member has complied with the Suspension Conditions. The Member must provide the College with access to any records associated with the practice that the College may require to verify that the Member has not engaged in the practice of dentistry or profited during the suspension; and
 - (vi) the Suspension Conditions imposed by virtue of subparagraphs 3(i)-(v) above shall be removed at the end of the period that the Member's certificate of registration is suspended.
- d) The Registrar shall also impose the following additional terms, conditions, and limitations on the Member's Certificate of Registration (the "Practice Conditions"), which are to be completed at the Member's expense, namely:
- (i) the Member is to complete a record-keeping course approved by the College within six (6) months of the date of the Panel's order;
 - (ii) the Member is to complete a billings course approved by the College within six (6) months of the date of the Panel's order;
 - (iii) the Member is to provide proof, acceptable to the Registrar, of successful completion (i.e., an unconditional pass) of the PROBE course;

- (iv) the Member is to complete 1:1 ethics instruction with a College-approved instructor within six (6) months of the date of the Panel's order. The College will provide the Notice of Hearing, Agreed Statement of Facts, Joint Submission on Penalty, and the Discipline Committee's reasons in the within matter to the instructor. The Member will provide the PROBE Program Evaluation and Assessment Report dated August 6, 2020 to the instructor before the ethics instruction begins. Prior to instruction commencing, the instructor will provide to the College the educational objectives for the instruction in writing for approval by the College.

Practice Monitoring

- (v) the Member shall retain a practice monitor acceptable to the College who shall meet with the Member during the twenty-four (24) months immediately following the date the Member returns to practice after serving the suspension referred to in paragraph 2 above. The practice monitoring shall focus on the Member's record-keeping and billing practices. For the first twelve (12) months, the Member shall meet with the practice monitor at least quarterly. For the final twelve (12) months, the Member shall meet with the practice monitor semi-annually.

Compliance Monitoring

- (vi) the Member shall inform the College of each and every location at which he practices ("Practice Locations") within five (5) days of commencing practice at that location;
- (vii) the Member agrees to submit to and not interfere with unannounced inspections by a College representative of his Practice Locations to confirm his compliance with this Order;
- (viii) the Member shall cooperate with the College during these unannounced inspections and further, shall pay to the College in respect of the costs of the inspections, the amount of \$1,000.00 per office inspection, such amount to be paid immediately after completion of each of the office inspection;
- (ix) the representative or representatives of the College may report the results of those office inspections to the Inquiries, Complaints and

Reports Committee (ICRC) of the College and the ICRC may, if deemed warranted, take such action as it considers appropriate;

- e) The Registrant shall pay costs to the College in the amount of \$10,000.00 within thirty (30) days of the date of this order.

Reasons for Penalty Decision

[15] It is settled law that a decision-maker should not lightly depart from an agreement that has been reached by the parties with respect to an appropriate penalty. The test as to whether it is appropriate to reject a joint submission on penalty is not one of “fitness of sentence” but rather, the more stringent test of whether the jointly proposed penalty “would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.”¹

[16] The Panel accepted the parties’ Joint Submission with respect to Penalty and Costs.² It did so bearing in mind that the paramount principle of penalty proceedings is to protect the public. A penalty must also address the principles of maintaining public confidence in the profession and in its ability to self-regulate. A penalty must serve as a measure of general deterrence, in that it sends a message to members of the dental profession that this type of conduct will not and cannot be tolerated. It must also serve as a measure of specific deterrence with respect to the dentist concerned. An appropriate penalty should also provide for remediation or rehabilitation of the dentist concerned, where possible and appropriate.

[17] Counsel for both the College and the Registrant argued that the Panel should accept the Joint Submission. The parties submitted that the joint proposal meets the goals of public protection, specific and general deterrence, and remediation. They argued that the proposed penalty reflects the seriousness of the misconduct, and that it is appropriate having regard to the aggravating and mitigating factors in this case, and to the interests of the public, the profession, and the Registrant himself.

[18] College submitted that *R v Anthony-Cook*,³ sets a high threshold for a panel to reject a joint submission and that this threshold has not been triggered in this case. Counsel for the Registrant took a similar position. She argued that the joint position must be defensible on the law and the facts, and that the position proposed in this case was defensible on both.

¹ *R v Anthony Cook* [2016 SCC 43](#) per Mr. Justice Michael Moldaver, cited with approval in *Ontario College of Teachers v Merolle*, 2023 ONSC 3453, para 32

² Exhibit 3

³ *Supra*, note 2

[19] Counsel for the parties directed the Panel to a number of cases that, in their submissions, were similar to this one.⁴ They argued that the penalties proposed in this case were within the range of penalty that has been ordered in these other, similar cases.

[20] The Panel considered the submissions of the parties' counsel and the cases they referred to.

[21] The Panel considered as aggravating factors the seriousness of Dr. Fortino's misconduct, the fact that the misconduct continued over a period of approximately two (2) years, that he engaged in the misconduct with respect to a number of patients, and that he continued to engage in the misconduct for a period of approximately four (4) months subsequent to Manulife beginning its own investigation into Dr. Fortino's billing practices.

[22] The Panel also considered as mitigating factors that Dr. Fortino has no prior discipline history with the College, that he cooperated with the College's investigation, that he pleaded guilty to the misconduct, as alleged, thereby avoiding a potentially costly and time-consuming hearing, and that he has refunded to the insurance company the monies in dispute, in full.

[23] Further in this regard, the Panel considered the remedial actions taken by Dr. Fortino since the Manulife investigation, including that he voluntarily:

- a) completed the three (3)-day CPEP PROBE Ethics Course in July 2020, with an unconditional pass;
- b) Underwent eight (8) coaching sessions with a professional ethics coach in 2020 and 2022;
- c) Completed the Academy of Dental Learning course entitled "Basic Ethics in Dentistry;" and
- d) Completed an additional four (4) courses related to his practice.

[24] The Panel's primary concern when considering the adequacy of the penalty being proposed was and is public protection. The Panel was satisfied that public protection is being met through the terms of the Joint Submission, as filed.

⁴ *The Royal College of Dental Surgeons of Ontario v. Hangfu*, 2022 ONRCDSO 6; *Royal College of Dental Surgeons of Ontario v. Lee*, 2020 ONRCDSO 4; *Royal College of Dental Surgeons of Ontario v. Peracchia*, 2021 ONRCDSO 13; *Royal College of Dental Surgeons of Ontario v. Saatian* (Discipline Committee, 2020)

[25] The Panel agreed that the penalty proposed with respect to Dr. Fortino was within the range of penalties administered in other, similar cases. Specifically, the Panel was directed to and relied upon the four (4) cases contained in the parties' Joint Brief of Authorities: all of these cases involved matters that came before the Discipline Committee of this College, and all involved similar acts of misconduct. The Panel was thereby satisfied that the penalty being proposed falls within the range of penalties that are ordered for like acts of misconduct.

[26] The Panel was satisfied that a four (4) month suspension, a reprimand, and the recording of the results of these proceedings on the College register will function to deter the Registrant from conducting himself in this manner again. These aspects of the penalty will also send a clear message to the members of the profession that professional misconduct of this nature will not be tolerated by the College. In this way, these elements of the penalty will have both specific and general deterrent impact.

[27] The additional terms, conditions, and limitations—including College-approved coursework and practice monitoring for a period of twenty four (24) months immediately following the date Dr. Fortino returns to practice—will further ensure public protection and help with Dr. Fortino's remediation.

[28] More specifically, Dr. Fortino is required:

- a) to complete College-approved courses in record-keeping, billings, and the PROBE course;
- b) to complete a one-to-one ethics instruction with a College-approved instructor;
- c) to retain a College-approved practice monitor for a period of twenty four (24) months following his return to practice; and
- d) to comply with monitoring of his practice by the College.

[29] These terms and conditions will serve to minimize the potential for Dr. Fortino again engaging in the misconduct found herein.

[30] In consideration of the above, the Panel was satisfied that the penalty being proposed by the parties was within the range for the type of misconduct engaged in by Dr. Fortino, that it was reasonable in the circumstances. The Panel is also confident that it will serve the functions of public protection, the maintenance of public confidence in the profession and in its ability to self-regulate, specific and general deterrence and, and remediation and rehabilitation of Dr. Fortino.

[31] Finally, the parties' joint submission that the Panel order the Registrant to pay costs to the College in the amount of \$10,000 is appropriate and reasonable. The Panel sees no reason to depart from the parties' agreement on costs.

The Reprimand

[32] At the conclusion of the discipline hearing, the Panel administered the reprimand to the Registrant. 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.



February 7, 2024

Date

Appendix "A"

RCDSO v. Dr. Joseph Fortino

Dr. Joseph Fortino, 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 have engaged in multiple acts of professional misconduct. The misconduct related to:

- a. Falsifying records relating to your practice and relative to multiple patients;
- b. 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 multiple patients;
- c. Submitting an account or charge for dental services that you knew or ought to have known was false or misleading relative to one of your patients.

The cumulative effect of your conduct would reasonably be regarded by members as disgraceful, dishonourable, unprofessional and unethical.

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:

- a. was not limited to a single patient or to a single incident. The conduct at issue took place over a period of more than one year, during 2018 – 2019, and involved multiple incidents of misconduct relative to multiple patients;
- b. that the acts of misconduct continued to take place for a period of four (4) months *after* Manulife began contacting you regarding concerns about improper billing;
- c. that the amount of money received by you for unsubstantiated billing was significant and totalled \$137,595.00, although it is acknowledged by this Panel that this sum has since been repaid by you; and that

- d. the members of your staff were admittedly involved in the production of false records or invalid claims, or the alteration of patient records for submission to Manulife.

Lastly, we acknowledge that you have no prior discipline history. This is one of the reasons that we have accepted the terms of the parties' Joint Submission with respect to Penalty and Costs. We urge you to take these proceedings very seriously and to recognize that should you be required to appear before a panel of the Discipline Committee in future, that the penalties you receive may be more severe.

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 Registrant declined to comment.

Thank you for attending today. We are adjourned.