

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

Citation: Royal College of Dental Surgeons of Ontario v. Nguyen, 2024 ONRCDSO 6

Date: 2024-12-11

File No.: 23-0943

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. Tri Tang Nguyen

DECISION AND REASONS FOR DECISION

PANEL MEMBERS:

Ms. Judy Welikovitsh, Public Member (Chair)

Dr. Rajiv Butany, Professional Member

Dr. Nancy Di Santo, Professional Member

Mr. Brian Smith, Public Member

Dr. Osama Soliman, Professional Member

APPEARANCES:

Anastasia Hountalas, for the College

Maggie Ng, on behalf of Dr. Tri Tan Nguyen

Luisa Ritacca, Independent Legal Counsel

Heard: December 11, 2024, by videoconference

Decision Date: January 27, 2025

Release of Written Reasons: January 27, 2025

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 December 11, 2024. This matter was heard electronically.

Preliminary Matter: Request for Adjournment

[2] At the outset of the hearing, the Panel was advised that the Registrant, Dr. Nguyen, did not intend to participate in the hearing, but that he had authorized his daughter, Maggie Ng, to attend as his representative. The Panel was advised by College counsel that they had received an email late in the afternoon the day prior to the hearing in which Dr. Nguyen confirmed that he would not be attending and that he was authorizing his daughter, Ms. Ng, to appear on his behalf.

[3] Ms. Ng advised the Panel that she had only recently learned of this matter and that she required one or two months to prepare a response and to “discuss resolution” with the College. Ms. Ng did not dispute the fact that her father, the Registrant, had received notice of the hearing, that he had many months to prepare, and that he had previously indicated to the College that he did not intend to participate. She also argued that her father was too ill to attend or participate because he was suffering from depression. In support of this aspect of her argument, Ms. Ng advised the Panel that she had a copy of a prescription for Sertraline from her father’s Family Physician, Dr. Chu Quang Le. She advised that the prescription for this anti-depressant was dated December 9, 2024, just a few days prior to this hearing that took place on December 11, 2024.

[4] The College opposed Ms. Ng’s request. The College provided the Panel with evidence that the Registrant has had notice of the allegations for a year and notice of the hearing date for several months. The evidence provided established that the Registrant was served with the College’s disclosure and the Notice of Hearing many months before the hearing date and that despite efforts by College counsel to communicate with him, the Registrant chose not to engage in the process until his daughter was appointed by him to appear on his behalf the day before the hearing.

Decision on Adjournment Request and Reasons

[5] The Panel denied Ms. Ng’s request for an adjournment. Instead, it recessed the hearing until 1:00 pm to provide Ms. Ng with time to organize, scan and deliver the documents upon

which she intended to rely, and speak to her father and her witness to see whether they would be able to attend the hearing later that afternoon. The reasons for this decision are set forth in the following paragraphs.

[6] The allegations against the Registrant date back to the 2014 – 2017 reporting cycle for non-compliance/non-cooperation with the College’s Quality Assurance Committee and the College’s requirement to report all continuing education (“CE”) completed during the cycle. The Panel notes that Dr. Nguyen’s non-compliance continues to this day, that he has had ample notice of the matters at issue in this hearing and of the details of his CE credit shortfall, and that the request for the adjournment came at the 11th hour and was made by Dr. Nguyen, although Ms. Ng informed the Panel that she had helped her father write the email.

[7] More particularly, the Registrant did not respond in February/March 2023 when he was notified that this matter would be placed before a panel of the College’s Inquiries Complaints and Reports Committee (the “ICRC”). He did not respond when he was notified on June 20, 2023, that the ICRC was considering referring allegations of professional misconduct to the RCDSO’s Discipline Committee. He did not respond when he was notified on October 4, 2023, that the ICRC had formed an intention to refer allegations of professional misconduct to the Discipline Committee. Ms. Nguyen did not dispute these particulars contained in the Notice of Hearing and in the College’s written submissions dated December 11, 2024.

A. Was Maggie Ng eligible to participate in the proceedings?

[8] Pursuant to section 41.1(1) of the *Health Professions Procedure Code* (the “Code”), the Panel may allow a non-party to participate in a hearing if “(b) the participation of the person would, in the opinion of the panel, be of assistance to the panel.”

[9] Upon hearing from Ms. Ng, and from the College, the Panel determined that she could participate in the hearing on behalf of her father. It was the opinion of the Panel that her participation would potentially assist it in deciding the matters before it.

B. Should the hearing be adjourned?

[10] Pursuant to the Rules of the Discipline Committee (the “Rules”), Dr. Nguyen had the right to bring a motion to adjourn the hearing. If he intended to do so, he was required to follow the procedures and to comply with the timelines set out in Rule 5.01 of the Rules. Neither he nor his daughter, Ms. Ng, complied with the Rules. No formal motion was served on the College or brought before this Panel. The Panel was asked by Ms. Ng - at the commencement of the

hearing on December 11, 2024 - to adjourn the hearing so that she could organize her documents and arrange for her witness to be present. She did not state that she required the adjournment so that her father could be present because she believed that he was too depressed to participate.

[11] Other than the prescription for Sertraline, issued just a few days before the hearing, there was no evidence that her father was unable to participate in the hearing due to depression. The Panel did not consider that there was sufficient evidence of Dr. Nguyen's alleged disability.

[12] Further, it was not clear to the Panel what purpose an adjournment would serve since there was no indication that the Registrant intended to participate in the hearing at some later date. Ms. Ng only sought an adjournment to allow her to organize and scan the documents she intended to adduce and to arrange for her witness to be present. Ms. Ng said that she had all the documents she intended to adduce in her possession at the time of the hearing, but they were not organized and had not been shared with College counsel.

[13] Moreover, the Panel was concerned with the lateness of the adjournment request, which the Registrant could have made weeks or months ago.

[14] In addition, there was no strong evidence that the Registrant would suffer prejudice in the event that the hearing proceeded as scheduled. There was no evidence, either from Ms. Ng or Dr. Nguyen, that the Registrant intended to attend a subsequent hearing. Ms. Ng was clear that she wanted the adjournment so that she could scan and organize her documents and have her witness available to testify. In the view of the Panel, since the Registrant did not intend to participate in future, his right to be heard would not be compromised should the adjournment request be denied.

[15] The Panel engaged in an analysis of the natural justice issues present in this case. In balancing the public interest in having the hearing conclude expeditiously against any potential prejudice to Dr. Nguyen of being compelled to proceed on December 11, 2024, the Panel concluded that the public interest issues outweighed the potential prejudice to Dr. Nguyen, particularly in light of the fact that he *demonstrated no intention to attend and participate at a future date*.

[16] Finally, the Panel was satisfied that this was not an appropriate case for an adjournment, particularly where the allegations against the Registrant relate specifically to a lack of compliance with prior directions and orders of College committees.

[17] Simply put, there was no compelling evidence to support a request for an adjournment put before the Panel.

[18] In consideration of the above, the Panel enquired whether Ms. Ng would be able to scan and organize her documents and provide them to College counsel and the Panel if the matter was stood down until 1:00 pm. Ms. Ng indicated that she would be able to do so. The Panel further suggested to her that she encourage her father to attend at 1:00 pm and that she contact her witness to determine her availability later that afternoon. Ms. Ng agreed that she would do both those things.

[19] The Panel decided to stand the hearing down until 1:00 pm. The hearing was thus adjourned for a period of a little less than three hours.

The Allegations

[20] The College's allegations of professional misconduct against Dr. Nguyen are set out in a Notice of Hearing dated December 21, 2023¹, as follows:

1. You committed an act or acts of professional misconduct as provided by s.51(1)(b.0.1) of the *Code* in that, during the year(s) 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and/or 2022, you failed to co-operate with the Quality Assurance Committee, contrary to Section 82(1) of the *Code*.

Particulars:

- During the 2014-2017 continuing education cycle, you failed to obtain ten points of mandatory Category 2: Approved Sponsor Courses, as required by Ontario Regulation 27/10 under the *Dentistry Act, 1991*, as amended ("*Quality Assurance Regulation*"). In February 2020, the Quality Assurance Committee directed you to make up the shortfall by completing the missing ten points of Category 2: Approved Sponsor Courses in addition to obtaining the minimum continuing education points required in the next cycle. The Quality Assurance Committee also told you it had directed College staff to review your e-Portfolio at the cycle's end to ensure your compliance.
- In February 2022, you were given until April 1, 2022 to enter your

¹ Exhibit 1, Notice of Hearing No. 23-0943

continuing education activities for the 2017-2021 cycle in your e-Portfolio, including the additional ten points from the previous cycle, and to provide the College with course certificates and other proof of attendance documents for the activities. You did not provide the requested documents by April 1, 2022.

- You did not respond to several attempts made by College staff in April 2022 to verify that you had complied with the College's Quality Assurance Program.
 - On or about May 17, 2022, the Quality Assurance Committee expressed serious concerns about your failure to cooperate with the Quality Assurance Program and formed an intention to disclose your name and its concerns to the Inquiries, Reports and Complaints Committee. You were notified and given an opportunity to provide a written response. You did not respond. On or about August 12, 2022, the Quality Assurance Committee disclosed your name and its concerns to the Inquiries, Reports and Complaints Committee.
 - To date, you have failed to give the Quality Assurance Committee proof of your compliance with its direction and remain in breach of your continuing education obligations under the *Quality Assurance Regulation*.
2. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the *Code* in that, during the year(s) 2014, 2015, 2016, 2017, 2018, 2019, 2020 and/or 2021, you breached Section 3 of the Quality Assurance Regulation, contrary to paragraph 48 of Section 2 of Ontario Regulation 853/93 under the *Dentistry Act, 1991*, as amended ("*Professional Misconduct Regulation*").

Particulars:

- Contrary to Section 3 of the Quality Assurance Regulation, in the 2017-2021 continuing education cycle, you did not:
 - o Participate in mandatory continuing education activities;
 - o Obtain the minimum number of continuing education point values, including the extra ten Category 2 points from the previous cycle; and/or

- o Retain a log of your continuing education activities with proof of attendance and participation.
 - In March 2019, you were informed by the College that you had been randomly selected to have your e-Portfolio reviewed for the 2014-2017 continuing education cycle. Subsequently, a review of your e-Portfolio showed a shortfall of ten points in Category 2: Approved Sponsor Courses for that cycle.
 - In February 2020, you were directed by the Quality Assurance Committee to make up the shortfall of ten Category 2 points in the next cycle.
 - In February 2022, you were given until April 1, 2022, to enter your continuing education activities for the 2017-2021 cycle in your e-Portfolio and to provide the College with course certificates and other proof of attendance documents for the activities claimed. You did not provide the requested documents by April 1, 2022.
 - To date, you still have not logged your continuing education activities for the 2017-2021 cycle and/or provided the College with proof of your attendance and participation.
3. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the *Code* in that, during the year(s) 2022 and/or 2023, you failed to reply appropriately or within a reasonable time to a written enquiry made by the College, contrary to paragraph 58 of Section 2 of the *Professional Misconduct Regulation*.

Particulars:

- In February 2022, you were given until April 1, 2022, to enter your continuing education activities for the 2017-2021 cycle in your e-Portfolio and to provide the College with course certificates and other proof of attendance documents for the activities claimed. You did not provide the requested documents by April 1, 2022.
- You did not respond to several written attempts made by College staff in April 2022 to verify that you had complied with the College's Quality Assurance Program.

- In September 2022, the College's Registrar appointed investigators under section 75(1)(b) of the Code to ascertain whether, by failing to reply appropriately or within a reasonable time to a written College inquiry and/or failing to co- operate with the Quality Assurance Committee, you committed an act or acts of professional misconduct or were incompetent.
 - In or about October and November 2022, the investigator repeated the prior requests for the 2017-2021 continuing education course certificates and other proof of attendance documents.
 - Despite multiple requests by the College, you still have not provided the course certificates and other proof of attendance documents for your 2017-2021 continuing education activities, as required by the *Quality Assurance Regulation*.
4. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the *Code* in that, during the year(s) 2014, 2015, 2016, 2017, 2018, 2019, 2020, and/or 2021, you engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical, contrary to paragraph 59 of Section 2 of the *Professional Misconduct Regulation*.

Particulars:

- You did not participate in continuing education activities that are a legal, professional and ethical obligation to ensure members' continued competence and protect the public.
- You did not obtain the minimum requisite number of continuing education points in the 2014-2017 cycle.
- You did not obtain the minimum requisite number of continuing education points in the 2017-2021 cycle.

The Registrant's Plea

[21] Ms. Ng confirmed that the Registrant denied the allegations as set out in the Notice of Hearing². The Chair thereupon entered a plea of “not guilty” for the Registrant.

The Evidence

[22] Upon resuming the hearing at 1:00 pm, Ms. Ng advised the Panel that she had been able to scan and organize her documentary evidence and that it had been provided to College counsel. She also advised the Panel that her father would not be attending but that she had been able to arrange for her witness, Julie Lam, to attend to give evidence before the Panel.

[23] The Panel also received the following evidence from the College, via affidavit and cross-examination:

- a) The Affidavit of Haley Russel [Exhibit 2], including 8 exhibits detailing correspondence between the College and Dr. Nguyen, and correspondence between the College and counsel for the College and process servers;
- b) The Affidavit of Susan Taylor [Exhibit 3]³, detailed below; and
- c) The Affidavit of Dorian Dwyer [Exhibit 4]⁴, including 5 exhibits detailing his correspondence with the Registrant following the appointment of the RCDSO of an investigator pursuant to section 75(1)(b) of the Code to ascertain whether Dr. Nguyen committed an act of professional misconduct or was incompetent. The contents of this Affidavit are set out in detail below.

Credibility of witnesses

[24] Both Ms. Taylor and Mr. Dwyer were called to provide oral evidence before the Panel. Ms. Lam was called by Ms. Ng to provide oral evidence before the Panel on behalf of the Registrant.

[25] The value of a witness' evidence must be assessed having regard to its credibility and reliability⁵. In order to make findings of fact, the Panel has assessed the credibility of each of the individuals who testified. We have also assessed the reliability and reasonableness of each

² Ibid.

³ Affidavit of Susan Taylor sworn December 2, 2024, Exhibit 3

⁴ Affidavit of Dorian Dwyer sworn December 3, 2024, Exhibit 4

⁵ *R v WL*, 2019 ONSC 1812 (CanLII), @ para. 29

individual's evidence with respect to the allegations made and the concerns expressed by placing that evidence in its context.

[26] By way of further explanation, credibility has often been described by courts and tribunals in the following way:

“Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what (s)he has seen and heard, as well as other factors, combine to produce what is called credibility...

... The test must reasonably subject (the witness') story to an examination of its consistency with the probabilities that surround the currently existing conditions. **In short, the real test of the truth of the story of a witness must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable....**”⁶ [Emphasis added]

[27] In other words, Courts and tribunals say that the real test of credibility requires:

- i. a decision-maker to put the witnesses' story in its own context, and to subject it to an examination of its consistency with the existing conditions; and
- ii. that the evidence must be in harmony with the preponderance of the probabilities that a practical and reasonable person would recognize as reasonable in the circumstances.⁷

[28] In assessing the evidence of the parties and witnesses, the Panel considered the individual witness' apparent powers of observation, their memory and description, the manner in which they answered questions put to them and their demeanour. In addition, we considered contextual evidence and the plausibility of their statements, as well as any significant inconsistencies and contradictions, both internal and external. We also considered whether it seemed that they were honestly endeavouring to tell the truth.⁸

[29] In her Affidavit⁹, Susan Taylor stated that she is the Director, Quality at the College. Ms. Taylor provided the Panel with information about the College's Quality Assurance Program

⁶ *Faryna v Chorny*, 1951 CanLII 252 (BCCA)

⁷ *Health Sciences Association of Alberta v. Capital Care Group Inc*, 2018 CanLII 105101 (AB GAA) @ para 35

⁸ *Ibid* @ para. 36

⁹ *Supra*, Note 3

generally and more specifically, about the Registrant's extended history of non-compliance with Quality Assurance. College counsel led Ms. Taylor through her Affidavit when she testified.

[30] Ms. Taylor provided the Panel with an overview of the legislation and the Quality Assurance Program. She stated that sections 80-83.1 of the Health Professions Procedural Code (the "Code"), being Schedule 2 of the *Regulated Health Professions Act, 1991* (the "RHPA"), require the College to maintain a Quality Assurance Program to assure the quality of the practice of the profession and to promote continuing evaluation, competence and improvement among the members.

[31] The Code specifies that the Quality Assurance Program must include continuing education or professional development, self, peer and practice assessments, and a mechanism for the College to monitor members' participation in and compliance with the Quality Assurance Program. The Code also establishes the Quality Assurance Committee and its powers.

[32] Ms. Taylor stated that the *Quality Assurance Regulation* made under the *Dentistry Act, 1991*¹⁰ provides additional information and requirements for the various components of the College's Quality Assurance Program.

[33] Ms. Taylor stated that section 3 of the *Quality Assurance Regulation*¹¹ states that the Quality Assurance Committee shall assess courses and activities and assign them continuing education point values. Every registrant shall obtain at least 90 continuing education points in each three-year cycle set by the Quality Assurance Committee, as follows:

- a) At least 15 points must be obtained from successfully participating in core courses approved by the Quality Assurance Committee ("Category 1: Core Courses");
- b) At least 45 points must be obtained ("Category 2: Approved Sponsor Courses"),
 - a. from successfully participating in courses offered by approved sponsors;
or
 - b. by teaching dentistry at a university faculty of dentistry, or teaching dental hygiene or Level II dental assisting at an institution approved by the Committee; and

¹⁰ *Ontario Regulation 27/10*, College Book of Authorities, Tab 10 @pages 131-141

¹¹ *Ibid*

- c) Any remaining number of points may be obtained from other courses (“Category 3: Non-Clinical Courses”).

[34] Ms. Taylor explained that section 3 of the *Quality Assurance Regulation* also states that the College shall provide each registrant with a Continuing Education Portfolio (the “e-Portfolio”) where they must retain the following information for each three-year continuing education cycle:

- a) records evidencing the registrant’s attendance at and participation in continuing education activities; and
- b) a log of continuing education activities attended, the nature of the activity undertaken, the sponsor, if any, and the number of points credited to that activity.

[35] With respect to the Registrant, Ms. Taylor attested that the Registrant was first registered with the College in 1996 and held a general certificate of registration until December 31, 2023, when he resigned his certificate of registration in the face of the allegations of professional misconduct now before this Panel.

[36] On January 31, 2020, the Quality Assurance Committee considered the results of the review and directed the Registrant to make up this shortfall by completing the missing ten points of Category 2: Approved Sponsor Courses in the next continuing education cycle (in addition to obtaining the minimum mandatory continuing education points for that cycle).

[37] In her affidavit, Ms. Taylor set out that on February 25, 2022, Michael Gardner, the former Director, Quality Assurance notified the Registrant that the 2017-2021 continuing education cycle had ended, and that his e-Portfolio had been assigned for review and was due no later than April 1, 2022. The Registrant did not respond.

[38] Ms. Taylor described further that the College provided the Registrant with various reminders and extensions to bring him into compliance with his quality assurance obligations, including the Assistant Registrar writing to the Registrant on April 5, 13 and 21, 2022 to ask for his response.

[39] Ms. Taylor explained in her affidavit that on May 17, 2022, the Quality Assurance Committee formed an intention to refer the Registrant’s name and its concerns to the ICRC. The Assistant Registrar notified the Registrant of this and provided him with another opportunity to submit a response. The Registrant did not respond.

[40] The Quality Assurance Committee referred the Registrant's name and its concerns to the ICRC on August 12, 2022.

[41] In cross-examination, Ms. Taylor confirmed that the entries in the e-Portfolio are done by the dentists themselves and that her team will cross-check the entries with the hard copy certificates submitted by the dentists. If there is a discrepancy between the hours logged in the e-Portfolio as against the certificates submitted, the dentist will have to either make up the shortfall or provide the College with the missing information.

[42] Ms. Taylor said that she was confident that the Quality Assurance team would have counted any of the certificates the Registrant delivered to the College and that if he had missed or was unable to upload the information onto his e-Portfolio, her team would have followed up with Dr. Nguyen.

[43] Overall, the Panel determined that Ms. Taylor was both reliable and credible on a balance of probabilities standard. When testifying, Ms. Taylor was precise and concise in her answers, she was straightforward, and her oral and Affidavit evidence was corroborated by the documentary evidence identified in the exhibits to her affidavit.

[44] Ms. Taylor's evidence under cross-examination was again precise and straightforward, and she recalled the events that led to this hearing with clarity, she was steadfast in maintaining that the Quality Assurance team had included in their calculation all of the CE certificates that had been provided to them by Dr. Nguyen; that "when there is a discrepancy, we rely on the hard copies." Importantly, her evidence was consistent with the evidence she provided in her Affidavit, and with the College's case that the conduct at issue was *non-compliance* with the reporting requirements for CE, and not whether Ms. Ng could prove, at the hearing, that Dr. Nguyen had taken sufficient CE courses in each reporting cycle. When asked repeatedly by Ms. Ng whether Ms. Taylor would accept the certificates "now" (meaning at the hearing), she replied that the Registrant had had many opportunities to respond but that he had not; that she would not accept them "now" because "of the passage of time." Again, her evidence was determined by the Panel to be reliable and credible on a balance of probabilities standard.

[45] The College also provided the Panel with an affidavit from Dorian Dwyer¹², Investigator, Professional Conduct and Regulatory Affairs with the College. Mr. Dwyer confirmed that he was appointed as an investigator on September 26, 2022, under section 75(1)(b) of the *Code*.

¹² Supra, Note 4

[46] In his Affidavit, Mr. Dwyer stated that on October 3, 2022, he requested that the Registrant acknowledge receipt and provide the College with the documents previously requested by the Quality Assurance Committee by November 7, 2022.

[47] Mr. Dwyer testified that on October 4, 2022, the Registrant acknowledged receipt of Mr. Dwyer's email. However, he did not provide any of the requested documents or an explanation for his non-compliance.

[48] Further, Mr. Dwyer stated that on November 11, 2022, he reminded the Registrant that his response was due by November 7, 2022, and asked him to confirm his intentions. The Registrant did not respond.

[49] Mr. Dwyer completed his investigation on February 14, 2023. The Registrant did not provide any substantive response.

[50] Mr. Dwyer's evidence was not challenged in cross-examination. Ms. Ng did, however, put forward the suggestion that perhaps her father had received the email of October 3, 2022, but that he had not read it, and that perhaps he had had difficulty reading it because it was sent by the College via encrypted email. No evidence was adduced to support these suggestions. These were matters of pure speculation and were dismissed as such by the Panel.

[51] In February and March 2023, following the completion of the College's investigation, the Registrant was notified that this matter would be placed before the ICRC for its consideration and was provided with an opportunity to provide a response by April 5, 2023. The Registrant did not respond.

[52] On June 20, 2023, the Registrant was notified that the ICRC was considering referring allegations of professional misconduct to the Discipline Committee and was given a final opportunity to provide the outstanding documents by July 20, 2023. The Registrant did not respond.

[53] On October 4, 2023, the Registrant was notified that the ICRC had formed an intention to refer allegations of professional misconduct to the Discipline Committee and was provided with an opportunity to provide a response by November 3, 2023. The Registrant did not respond.

[54] The matter was referred to the Discipline Committee. To date, in continuing violation of the *Quality Assurance Regulation* and the Quality Assurance Committee's decision of January 31, 2020, the Registrant has not reported that he has completed the minimum requisite number

of continuing education points for either the 2014-2017 or 2017-2021 continuing education cycles.

[55] The Panel determined that the unchallenged evidence of Mr. Dwyer was both credible and reliable on a balance of probabilities standard. He testified in an objective and straightforward manner, and his oral and Affidavit evidence was corroborated by the documentary evidence attached as Exhibits to his Affidavit.

[56] Finally, the Panel received oral evidence on behalf of Dr. Nguyen from Julie Nga Lam, a nurse and family friend of the Registrant, who confirmed that she visited the Registrant while he was in hospital in the spring 2022. The College did not dispute that the Registrant was hospitalized for some period of time in 2022 for a broken bone and COVID-19.

[57] Ms. Lam testified about her single visit to Dr. Nguyen while he was in hospital in April 2022, that she had attended Mrs. Nguyen's funeral and that Dr. Nguyen seemed very depressed at the funeral, "not the person I knew before".

[58] Ms. Lam also testified that she had seen the Registrant once, very recently, when she stopped by his home at the request of Ms. Ng. She stated that she observed that he had lost a lot of weight, and that he was "not the high-spirited dentist I used to know."

[59] Ms. Lam's evidence was adjudged credible and reliable by the Panel. She was straightforward in her testimony and would only attest to matters within the scope of her knowledge. However, while Ms. Lam's evidence provided some broader context for the Panel, it was not relevant to the issues to be decided by the Panel.

[60] The College also received a copy of the death certificate of Tien Thi Kim Nguyen, the Registrant's wife, verifying that she died in Toronto on September 17, 2022¹³. The College did not contest that the Registrant lost his wife and that, following her death, he likely went through a period of grieving.

Decision

[61] Having considered the totality of the evidence and submissions of the parties, the Panel finds, on a balance of probabilities standard, that the Registrant committed the acts of

¹³ Book of Documents provided by Ns. Ng, Exhibit A, at page 59/88

professional misconduct and that he engaged in conduct that was disgraceful, dishonourable, unprofessional or unethical, as alleged in the Notice of Hearing¹⁴.

Reasons for Decision

Onus of Proof

[62] In coming to its decision, the Panel understands that the onus of proof is on the College to prove, on a balance of probabilities, that the Registrant engaged in the misconduct alleged. The Registrant is under no obligation to prove or disprove anything.

[63] The documentary evidence in this case was overwhelming. It was not seriously contested that the Registrant received a number of communications from Quality Assurance starting in 2020, and then from the Associate Registrar and Investigator in 2022, and that he ignored them all.

Standard of Proof

[64] With respect to its findings, the test that the Panel must apply is whether the conduct at issue occurred on a “balance of probabilities”. This means that the Panel must assess and evaluate whether it was more likely than not that the conduct alleged occurred. This is distinct from the more commonly known standard of “proof beyond a reasonable doubt” that is applied in criminal proceedings.

Allegation 1: The Registrant failed to cooperate with the Quality Assurance Committee or any assessor appointed by that committee (clause 51(1)(b.0.1) of the Code)

[65] On January 31, 2020, the Quality Assurance Committee directed the Registrant to make up a shortfall in the mandatory continuing education points he submitted in the previous cycle by completing the missing ten points of Category 2: Approved Sponsor Courses in the next continuing education cycle.

[66] The Registrant did not comply with the Quality Assurance Committee’s direction despite repeated reminders, extension and opportunities to do so. This is professional misconduct.

[67] Ms. Ng provided various explanations for the Registrant’s non-compliance and non-responsiveness, including that he was hospitalized with COVID-19 and a broken bone in April

¹⁴ Supra, Note 1

2022, that his wife passed in September 2022 and that the Registrant is currently experiencing grief and depression.

[68] While the Panel accepts Ms. Ng's submission regarding her father's circumstances, it does not provide the Panel with a reasonable explanation for why the Registrant chose not to complete his missing education points as he was directed to do in 2020, well prior to his hospitalization with a broken bone and COVID-19 in April 2022, and to his wife's passing in September 2022.

[69] Compliance with the Quality Assurance Committee is a fundamental obligation for all registrants of this College. Without accurate and timely information from registrants, the Quality Assurance Committee cannot fulfil its role in ensuring the competency and quality of the dental services available in the Province.

[70] Upon a review of the evidence before the Panel, it is satisfied, on a balance of probabilities, that Dr. Nguyen did not comply with the Quality Assurance Committee's direction despite repeated reminders, an extension, and on-going opportunities to do so. The Panel finds, on a balance of probabilities, that Dr. Nguyen continued a pattern of non-compliance over the course of several years and that he is therefore guilty of professional misconduct.

Allegation 2: Contravening a provision of the Act, the RHPA or the regulations under either of those Acts (clause 51(1)(c) of the Code and paragraph 48 of Regulation 853/93)

[71] Section 3 of the *Quality Assurance Regulation* sets out the College's mandatory quality assurance requirements. Specifically, it states that each registrant shall obtain at least 90 continuing education ("CE") points in each three-year cycle and maintain an e-portfolio documenting their continuing education activities. These are the minimum requirements that every registrant must complete in order to meet their professional obligations.

[72] The Registrant did not meet these requirements in either the 2014-2017 or 2017-2021 continuing education cycles. Ms. Ng tried to suggest that the College's information was incomplete, but there was nothing before the Panel to suggest that the Registrant has ever made any effort to correct what Ms. Ng says was "incomplete" information about his credits.

[73] Ms. Ng, on behalf of the Registrant, provided the Panel with copies of many CE certificates which she claimed would prove that Dr. Nguyen had indeed taken the requisite number of CE credits for the 2014 – 2017 and 2017 – 2021 cycles. The Panel accepted these certificates and entered them, together with other documents, as Exhibit A and not as a

numbered exhibit. The panel explained to Ms. Ng that these documents were not being entered for the truth of their contents.

[74] The Panel was also clear with Ms. Ng that the allegation at issue was whether her father, Dr. Nguyen, had complied with the **reporting requirement** for CE credits set out in Ontario *Regulation 27/10* made under the *Dentistry Act 1991*¹⁵, and not whether he had taken sufficient course credits during those periods. The hearing into his misconduct was not an opportunity to correct the Registrant's CE record, if in fact it needed correcting. The hearing was an enquiry into whether the Registrant had complied with his obligation to report any CE credits he had obtained during those CE reporting periods.

[75] In the circumstances and on the basis of the documentary record submitted by the College, the Panel is satisfied, on a balance of probabilities standard, that Dr. Ng was in clear breach of his reporting obligations under the *Quality Assurance Regulation*¹⁶. Accordingly, the Panel finds that Dr. Ng is guilty of professional misconduct, as alleged.

Allegation 3: Failing to reply appropriately or within a reasonable time to a written enquiry made by the College (clause 51(1)(c) of the Code and paragraph 58 of Regulation 853/93)

[76] The Registrant did not provide a substantive response to the College regarding his outstanding quality assurance obligations at any point between February 2022 and October 2023 despite repeated requests that he do so and despite his confirming receipt of correspondence sent to his email address¹⁷. The Panel is satisfied, on a balance of probabilities standard, that the evidence establishes that the Registrant received the College's correspondence and that he chose to disregard it.

[77] Ms. Ng raised the alleged personal and health struggles that the Registrant was experiencing at what she alleged was the time in question as an answer to Dr. Nguyen's on-going failure to respond or reply to the College within a reasonable period.

[78] There was no evidence before the Panel that the Registrant experienced any impediment to compliance from March 2019, when he was first informed by the College that he had been randomly selected to have his e-Portfolio reviewed for the 2014 – 2017 CE cycle until

¹⁵ *Ontario Regulation 27/10, Dentistry Act 1991*, section 3 "Continuing Education"

¹⁶ *Ibid*

¹⁷ Affidavit of Dorian Dwyer, Paragraphs 4 - 9

April 2022, when Ms. Ng stated that the Registrant was hospitalized with a broken bone and COVID-19.

[79] Further, Ms. Taylor gave evidence that Ms. Ng alerted the College's quality assurance team when the Registrant was hospitalized and that he was provided with an extension to accommodate this illness. Ms. Taylor was clear that the Registrant continued his pattern of non-compliance after he was discharged.

[80] The law is clear that a regulated health professional is obliged to respond to their regulator (see for example, *College of Dental Hygienists of Ontario v McIntosh*)¹⁸. We agree with the rationale set out by the Discipline panel in that case, which confirmed that it is an act of professional misconduct to fail to respond appropriately or within a reasonable time to a written inquiry from the College. The registrants of the regulated health professions are obliged to respond to their College in a timely and appropriate manner. It is a fundamental requirement of membership for a regulated professional to be responsive to their regulator.

[81] The Panel finds, on a balance of probabilities standard, that the Registrant intentionally ignored his obligations to his College and to his profession in choosing not to respond to the requests of the Quality Assurance team, contrary to paragraph 58 of the *Regulation*. The Panel further finds that the difficulties he experienced in 2022 do not absolve him of his statutory obligations, particularly given that he had failed to respond to the College since at least 2020.

[82] The Panel therefore finds that Dr. Nguyen is guilty of professional misconduct, as alleged.

Allegation 4: Engaging in Disgraceful, Dishonourable, Unprofessional or Unethical Conduct (clause 51(1)(c) of the Code and paragraph 59 of Regulation 853/93)

[83] The phrase "disgraceful, dishonourable, unprofessional or unethical conduct" is intended to capture any improper conduct that is not caught by the wording of the specific definitions of professional misconduct. However, conduct need not be dishonest or immoral to fall within the definition. A serious or persistent disregard for one's professional obligations is sufficient.¹⁹

[84] Expert evidence is not needed to establish that the conduct is disgraceful, dishonourable, unprofessional or unethical. It is sometimes presumed that the profession will

¹⁸ Ontario (*College of Dental Hygienists of Ontario v McIntosh*, 2024 ONCDHO 01 at College's Book of Authorities, Tab 3

¹⁹ Richard Steinecke, *A Complete Guide to the Regulated Health Professions Act* (Toronto: Thomson Reuters, 2022) at 6:62, contained in College's Book of Authorities, Tab 5

often be harder than the general public on its own members. Importantly for the present matter, conduct that does not harm the practitioner's patient can still be unprofessional. This is particularly the case where third parties are placed at risk or if the conduct reflects a lack of integrity.²⁰

[85] As noted, the law is clear that a regulated health professional must comply with all mandatory requirements of the College of which that professional is a member. Failure to do so can result in a finding of misconduct. Failing to respond to, cooperate with or comply with one's regulatory body places the public at risk and is conduct that cannot be tolerated.²¹

[86] *In Royal College of Dental Surgeons of Ontario v Miller*²², a panel of this College's Discipline Committee made a finding of disgraceful, dishonourable, unprofessional or unethical conduct in circumstances where Dr. Miller had failed to cooperate with the Quality Assurance Committee, had failed to rectify his CE credit shortfall for the years 2011 to 2017, and had failed to reply to College communications.

[87] Dr. Nguyen's misconduct mirrors that of Dr. Miller: he, too, failed to cooperate with the Quality Assurance Committee, failed to rectify his CE credit shortfall that began with the 2014-2017 reporting cycle and is on-going, and failed to reply to RCDSO communications. This Panel found that Dr. Nguyen's misconduct began in February 2020, when he was directed by the Quality Assurance Committee to make up the shortfall of ten (10) Category 2 CE credits in his next CE cycle and it continues to the present day.

[88] Further, this Panel found that, during the years 2022 and 2023, Dr. Nguyen failed to reply appropriately or within a reasonable time to written enquiries made by the College.

[89] In view of the Panel's findings with respect to Allegations 1, 2 and 3, the Panel finds that Dr. Nguyen's behaviour is consistent with that of a registrant who does not respect the authority of his regulatory body and who does not show any willingness to be remediated. Further, the Panel finds that Dr. Nguyen's disregard for his professional obligations was serious and persistent.

²⁰ Ibid

²¹ *The College of Dental Hygienists of Ontario v McIntosh*, 2024 ONHCDO 01, Book of Authorities, Tab 3, at page 55/141

²² *Royal College of Dental Surgeons of Ontario v Miller*, 2021 ONRCDSO 9, Book of Authorities, Tab 9 at page 73/141

[90] This Panel finds that Dr. Nguyen's misconduct would reasonably be regarded by registrants and the public as disgraceful, dishonourable, unprofessional and unethical.²³

[91] I invite the parties to contact the Hearings Administrator to schedule a penalty and costs hearing.

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



January 27, 2025

Date

²³ Ibid