

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

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

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

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

Members in Attendance: Susan Davis, Chair
Margaret Dunn
Dr. Sandy Venditti
Dr. Kate Towarnicki
Dr. David Mock

BETWEEN:

**ROYAL COLLEGE OF DENTAL
SURGEONS OF ONTARIO**

- and -

DR. CLAUDETTE PRAGER

) Appearances:
)
) Ms. Andrea Gonsalves
) Independent Counsel for the
) Discipline Committee of the Royal
) College of Dental Surgeons of Ontario
)
) Mr. Nick Coleman
) For the Royal College of Dental
) Surgeons of Ontario
)
) Ms. Lisa Freeman
) For Dr. Claudette Prager

Hearing held November 23, 2018

REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) at the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on November 23, 2018.

PUBLICATION BAN

On the request of the College and with the consent of the Member, the Panel made an order that no person shall publish, broadcast or in any manner disclose the identity of, or any facts or information that could identify, the patient referred to orally at the hearing or in the exhibits filed at the hearing.

THE ALLEGATIONS

The allegations against Dr. Claudette Prager (the “Member”) were set out in a Notice of Hearing dated April 17, 2017, which contains the following allegations against the Member.

1. 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, during the year(s) 2014 and 2015 , you charged a fee that was excessive or unreasonable in relation to the service performed relative to one of your patients, namely [N.M.], contrary to paragraph 31 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- In or about the year 2015, you failed to return a deposit for treatment that was never performed:
 - On or about November 11, 2014, [N.M.] paid a \$1,000 deposit for a crown on tooth 27 (upper left 2nd molar), and on or about January 15, 2015, [N.M.] paid a further \$600 deposit towards this treatment. A crown was never fabricated by the lab or placed on [N.M.]’s tooth 27.

2. 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, during the year 2016, you failed to comply with an order of a panel of the Discipline Committee, contrary to paragraph 52 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- In or about the year 2016 you breached the Order of the Discipline Committee dated April 20, 2015, which dictates that you are required to comply with the College's Practice Advisory on Release and Transfer of Patient Records and to maintain other recordkeeping practices, including "to respond promptly to all requests from the College for original copies of patient records."
 - You were in breach of this Order when the College made repeated attempts to obtain [N.M.]'s original patient record from you on or about December 29, 2015, February 9, 2016, on four occasions between March 1 and March 15, 2016, on March 22, 2016, March 30, 2016, April 21, 2016, and on May 20, 2016.
 - You hand delivered [N.M.]'s original patient records to the College on May 18, 2016, almost five months after the College's original request.
3. 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, during the year 2016, 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 Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- In or about the year 2016 you failed to respond to repeated enquiries made by the College to obtain [N.M.]'s original patient record as required by Regulation.
- [N.M.]'s patient record was only obtained on or about May 18, 2016, almost five months after you were notified of the

formal complaint on or about December 29, 2015, and more than three months after the original deadline you were provided to respond of February 2, 2016.

4. 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, during the year 2016, 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 relative to one of your patients, namely [N.M.], contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- In or about the year 2015, you failed to return your patient's \$1,600 deposit for treatment not rendered by you.
- In or about the year 2016, you breached the April 20, 2015, Order of the Discipline Committee requiring you to respond promptly and fully to the requests of the College for copies of patient records, yet you did not provide [N.M.]'s patient record until on or about May 18, 2016, more than five months after you were notified of the formal complaint on or about December 29, 2015, and more than three months after the original deadline you were provided to respond of February 2, 2016.
- You are ungovernable, in that you have failed to learn from previous decisions of the ICR Committee and the Discipline Committee where you have been cautioned, reprimanded, required to obtain a mentor with respect to your practice management, and had terms, conditions and limitations imposed on your certificate of registration for issues similar to those raised in this complaint, and specifically for failing to:
 - transfer patient records;
 - respond appropriately and promptly to College requests for patient records;
 - comply with orders of the Discipline Committee and decisions of the ICR Committee

THE MEMBER'S PLEA

The Member admitted to the allegations of professional misconduct in the Notice of Hearing, except for the particular in allegation 4 regarding ungovernability. The Member also made admissions in writing in an Agreed Statement of Facts, which she signed.

The Member answered and signed a written plea inquiry, which was entered as an exhibit at the hearing. She confirmed at the hearing that she understood the contents of that document. The Panel was satisfied that the Member's admissions of professional misconduct were voluntary, informed and unequivocal.

THE EVIDENCE

On consent of the parties, College Counsel introduced into evidence an Agreed Statement of Facts which substantiated the allegations. The Agreed Statement of Facts provides as follows.

Allegations of Professional Misconduct

1. The allegations of professional misconduct against Dr. Claudette Prager are set out in the Notice of Hearing dated April 17, 2017 (Exhibit 1).
2. The allegations of professional misconduct against Dr. Prager arise from her failure to refund a \$1,600 deposit made by her former patient, N. M., in respect of a service that was never performed. When this matter came to the attention of the College following a complaint by N. M., Dr. Prager failed to co-operate with the College's investigation and failed to provide requested patient records in a timely manner. In so doing, Dr. Prager also violated a prior order of the Discipline Committee of the College.

Background

3. Dr. Prager has been registered with the College as a general dentist since May 1984.
4. At the relevant times, Dr. Prager had her own practice at #501, 1849 Yonge Street in Toronto, Ontario.

Complaint to the College

5. The current investigation of Dr. Prager's conduct by the College was prompted by a complaint by a former patient, N. M., which was submitted to the College on December 20, 2015.
6. In her complaint, N. M. indicated that she was a former patient of Dr. Prager, and had provided Dr. Prager with a \$1,600 advance for future dental work, namely the placement of a crown. N.M. sought a second opinion and ultimately a crown was not placed by Dr. Prager. N.M. complained that Dr. Prager had failed to refund the \$1,600 advance.

Dental Treatments

7. On December 13, 2013, Dr. Prager removed an old restoration in tooth #27 with deep recurrent decay close to the pulp for N.M. She placed a temporary restoration (ZOE filling).
8. On September 18, 2014, Dr. Prager removed the temporary restoration in tooth #27 and found a carious pulp exposure. Dr. Prager referred N.M. to Dr. L. C. for an endodontic assessment. Dr. Prager identified that the nerve of tooth #27 was exposed and there was a cavity. Dr. Prager concluded that this was more than likely the cause of the discomfort reported by N.M. After examination, Dr. L.C. concluded that N.M. required a root canal. After the root canal was completed, the patient was referred back to Dr. Prager to complete the buildup of tooth #27, to prep the tooth for a crown, and eventually to insert a crown.
9. On November 11, 2014, Dr. Prager removed the temporary filling placed on tooth #27 by Dr. L.C. after the root canal therapy. She then prepared the tooth for a PBM crown. She placed a temporary custom crown with temp bond. N.M. was a smoker, a fact known to Dr. Prager. Dr. Prager advised N.M. to maintain better oral hygiene and to quit smoking to improve chances for a successful outcome.
10. On December 9, 2014, N.M. returned to Dr. Prager's office. The intention was to take the impression for the permanent crown. Unfortunately, this was not possible due to inflammation around tooth #27. Dr. Prager re-prepped tooth #27 for the PBM crown. She noted that the patient had to improve home care, and that the patient would have to return to take the final impression.

11. Dr. Prager believed N.M. would return soon for the final impression of tooth #27. The patient, however, continued to complain of discomfort. To that end, on January 27, 2015, Dr. Prager referred the patient back to Dr. L.C. requesting that he conduct a further examination to determine the source of the problem. Dr. L.C. subsequently determined that the tooth needed to be extracted since he could not find any reason for N.M.'s discomfort. In a gesture of goodwill, he reimbursed N.M. in the amount of \$1,000 in relation to his charges for treatment.
12. N.M. went back to Dr. Prager. On July 15, 2015, Dr. Prager referred her to an oral surgeon, Dr. C.C. On the referral form to Dr. C.C., Dr. Prager indicated that the root for tooth #27 was fractured and not restorable.
13. N.M. complained that she made numerous attempts to contact Dr. Prager to request a refund of the \$1,600 advance; in each case, Dr. Prager either failed to provide a refund or did not respond at all.

College Investigation

14. The College assigned an investigator to investigate N.M.'s complaint in December 2015.
15. On December 29, 2015, the College investigator provided Dr. Prager with a copy of the complaint. In her covering letter, the College investigator asked Dr. Prager to provide a written response to the complaint on or before February 2, 2016 (mistakenly written as February 2, 2015), as well as to provide all original patient records concerning N. M.
16. Having received no response, on February 9, 2016, the College investigator called Dr. Prager. Dr. Prager advised that she had misread the date on the College's letter. The College investigator granted Dr. Prager an extension to February 23, 2016 to respond.
17. Again, Dr. Prager did not provide a response to N. M.'s complaint, nor did she provide the requested patient records. The College investigator called Dr. Prager on March 1, 11, 14, and 15, 2016, each time leaving a message asking Dr. Prager to return her call.
18. On March 16, 2016, Dr. Prager left a voicemail for the College investigator advising that she was out of town, but that N. M.'s

patient records would be hand-delivered to the College that day. The records were not delivered to the College.

19. The College investigator called Dr. Prager on March 22, 2016. Dr. Prager returned her call later that day, advising that the patient records would be delivered to the College on March 24, 2016. Again, the records were not delivered to the College.
20. On March 30, 2016, the College investigator wrote to Dr. Prager advising that the College still had not received any of the requested patient records. The College investigator directed Dr. Prager to provide the records by April 6, 2016, together with any response to N. M.'s complaint. The College investigator advised Dr. Prager that, if she did not provide the records by April 6, 2016, a panel of the Inquiries, Complaints and Reports Committee ("ICRC") of the College may appoint an investigator pursuant to subsection 75(1)(c) of the *Regulated Health Professions Act, 1991* ("RHPA").
21. The correspondence dated March 30, 2016 was returned to the College on April 7, 2016 as unclaimed. The College investigator called Dr. Prager on April 8, 2016; the voicemail message indicated that her office was closed for the day.
22. On April 21, 2016, the College investigator wrote again to Dr. Prager, requesting that she provide the patient records by May 2, 2016.
23. Dr. Prager did not provide the patient records or any response to the complaint, nor did she otherwise respond to the College investigator's correspondence. Accordingly, on May 12, 2016, the College Registrar appointed an investigator under subsection 75(1)(c) of the RHPA to investigate N. M.'s complaint and to obtain N. M.'s patient records.
24. On May 18, 2016, Dr. Prager hand delivered N. M.'s patient records to the College. Those records indicated that, on November 11, 2014, N. M. had paid a \$1,000 deposit for a crown on tooth 27. On January 15, 2015, N. M. had provided a further \$600 advance towards the crown. However, no crown was placed on tooth 27 and – despite N. M.'s requests – this money was never refunded to her.

25. The College investigator also obtained and reviewed patient records for N. M. from Dr. M. A. and from Dr. L. C. who had also provided dental services to N. M.

Report of Investigation

26. The College investigator prepared a Report of Investigation which was presented to the Registrar on July 15, 2016. In the Report, the investigator summarized her interactions with Dr. Prager in relation to the investigation and the patient records for N. M.
27. A copy of the Report of Investigation was also couriered to Dr. Prager on July 20, 2016. This correspondence, including the Report of Investigation, was returned to the College on August 4, 2016, as unclaimed.
28. On August 10, 2016, the College investigator re-sent the Report of Investigation to Dr. Prager by secure email. In her cover letter, the College investigator asked Dr. Prager to provide her response to the Report of Investigation, if any, by September 14, 2016.
29. Having received no response, on September 29, 2016, the College investigator sent a further letter extending Dr. Prager's deadline to respond to October 13, 2016.
30. On October 2, 2016, Dr. Prager called the College investigator and advised that she was having difficulty accessing the Report of Investigation via secure email. Dr. Prager also indicated that she would like to refund N. M. for the funds N. M. had paid for the crown on tooth 27 that had not been done.
31. The College investigator subsequently emailed Dr. Prager a copy of the secure email user guide. Dr. Prager did not provide any response to the Report of Investigation.
32. The Report of Investigation and prior disciplinary decisions regarding Dr. Prager were reviewed by a panel of the ICRC on February 21, 2017. The ICRC expressed very serious concerns about Dr. Prager's conduct with respect to N. M. and in connection with the College's investigation. Dr. Prager was advised of the ICRC's concerns and invited to make written or oral submissions to the ICRC for its meeting on April 13, 2017.
33. Dr. Prager spoke to a representative of the College on March 3, 2017. Dr. Prager confirmed that she had received the College investigator's correspondence dated February 24, 2017. Dr. Prager

indicated that she did not intend to provide written submissions, but would attend the ICRC's April 13, 2017 meeting in-person. The College investigator wrote to Dr. Prager on March 8, 2017 to confirm Dr. Prager's attendance.

Decision to Refer

34. On April 13, 2017, a panel of the ICRC met to consider referring specified allegations of professional misconduct against Dr. Prager. Dr. Prager attended the meeting and made submissions to the ICRC.
35. The ICRC decided to refer allegations of professional misconduct against Dr. Prager to the Discipline Committee. As noted above, the Notice of Hearing was issued on April 17, 2017.

Reimbursement to Complainant

36. On May 4, 2017, Dr. Prager reimbursed N.M. the full \$1,600.

Practice Advisory

37. The College published a Practice Advisory regarding the Release and Transfer of Patient Records in August 2007 ("Patient Record Practice Advisory"). The Patient Record Practice Advisory set out in detail the requirements and procedures for transferring patient records to the College (among others). The Patient Record Practice Advisory indicates that, in most cases, patient records should be transferred within two weeks of receipt of the request.

Record of Prior Discipline and College Concerns

38. Dr. Prager has an extensive history with the College. Some common themes include failing to keep patient records as required and failing to co-operate with investigations and inquiries by the College.
39. In December 1999, Dr. Prager was found guilty of professional misconduct by refusing to provide dental services in 1998 to two patients who were HIV positive. The penalty order included suspension of Dr. Prager's certificate of registration for two months; terms, conditions, and limitations requiring her to complete a course on infection control precautions for HIV and AIDS patients in a dental office; and a fine of \$1,500.

40. In 2002, Dr. Prager was cautioned by the Complaints Committee on two occasions regarding her failure to release patient records in a timely manner, as well as other practice management issues.
41. In October 2003, Dr. Prager was found guilty of professional misconduct for failing to abide by a written undertaking that she had provided to the College in June 2002. In particular, she failed to complete a mentoring program, comply with the recommendations of her mentor, and pay the mentor's account, all contrary to the terms of the undertaking. The penalty order included terms, conditions, and limitations to comply with certain recommendations her mentor had already made, retain a new mentor and comply with that mentor's recommendations, submit to monitoring by the College, be subject to monitoring by the College for a period of 36 months, and complete a course in ethics and jurisprudence. As well, Dr. Prager was ordered to pay costs of \$2,500.
42. In December 2004, Dr. Prager was found guilty of professional misconduct for failing to keep records regarding patients as required and failing to ensure that the information provided to her by the College was accurate. Further, she was found to have failed to comply with the order of the Discipline Committee in respect of the hearing held in October 2003, in that she failed to pay the amount for costs to the College in that matter. As a result, Dr. Prager's certificate of registration was suspended for a period of 6 months. In addition, terms, conditions, and limitations were imposed on her certificate of registration requiring her to undergo a psychiatric assessment, to retain a practice mentor and comply with the mentor's recommendations, to be monitored by the College for a period of 36 months, and to complete a one-on-one course in recordkeeping.
43. In November 2006, Dr. Prager was found guilty of professional misconduct for failing to comply with the order of the Discipline Committee in respect of the hearing held in December 2004 requiring her to retain a practice mentor. As well, she failed to respond to inquiries from the College on multiple occasions in January-May 2005 and she failed to provide required documentation for the psychiatric assessment (also ordered following the December 2004 hearing). In its decision, the Discipline Committee found as fact that Dr. Prager was "ungovernable in that she is beyond the control of her regulatory body". In light of the continuing misconduct and Dr. Prager's

disciplinary record, in the interests of the public and in effective self-regulation, the Discipline Committee ordered that Dr. Prager's certificate of registration be revoked.

44. Dr. Prager appealed the January 24, 2007 decision of the Discipline Committee to the Divisional Court. Dr. Prager also underwent a psychiatric assessment and provided a psychiatric report that attributed her ongoing problems with practice and regulatory matters to psychiatric conditions.
45. In November 2009, Dr. Prager and the College agreed to a Consent Order disposing of the appeal which substituted a two-month suspension of Dr. Prager's certificate of registration plus detailed terms, conditions, and limitations for the discipline order revoking her certificate of registration. Amongst other things, Dr. Prager was required to retain a practice mentor and to implement the recommendations of the practice mentor in a timely fashion. As well, Dr. Prager was required to comply with all treatment recommendations of her psychiatrist. Her practice was to be monitored by the College for an additional 36 months. Finally, Dr. Prager's certificate of registration was to be suspended if, in the opinion of the Registrar or the ICRC, she failed to comply with any of the terms, conditions, and limitations on her certificate of registration, with the suspension to continue in effect until she could demonstrate that she was compliant.
46. Dr. Prager's problems with recordkeeping and governability continued. Her certificate of registration was suspended from August 18, 2012 to September 21, 2012 and again from June 3, 2013 to June 24, 2013 when she failed to comply with the terms, conditions, and limitations set out in the consent order dated November 27, 2009. In addition, on August 28, 2012, following three separate complaints, Dr. Prager was cautioned to respond to requests for the transfer of patient records in a timely fashion, and to respond to communications from the College in a prompt and appropriate manner.
47. In April 2015, Dr. Prager was found guilty of professional misconduct for failing to keep, and improperly storing, required patient records. The Discipline Committee also found that Dr. Prager had failed to co-operate with the College investigator, failed to ensure that information she provided to the College investigator was accurate, and failed to respond appropriately or within a reasonable time to inquiries from the College

investigator. The order issued by the Discipline Committee included terms, conditions, and limitations that required Dr. Prager to complete, at her own expense, a further course on recordkeeping, to continue her treatment with her treating psychiatrist and comply with his treatment recommendations, and to retain, and at her own expense, a practice mentor. Dr. Prager was also required to comply with the Patient Record Practice Advisory and to maintain other recordkeeping practices, including that she respond promptly and fully to all requests from the College for patient records. Finally, the Discipline Committee ordered that Dr. Prager's practice was to be monitored by the College and, if the Registrar determined that she had failed to comply with the conditions of the penalty order, Dr. Prager's certificate of registration would be immediately suspended.

48. In its Reasons for Decision, the Discipline Committee made the following observations about Dr. Prager's skills as a dentist as they relate to protection of the public:

When considering the need to protect the public and the public interest, the Panel noted that Dr. Prager's disciplinary history, though extensive, did not contain any evidence of poor dentistry causing harm to her patients.

Results of Monitoring Inspections and Mentoring

49. As a result of the 2015 proceedings, Dr. Prager has been subject to both a monitoring term and a mentoring term. Dr. Helene Goldberg was assigned by the College to be Dr. Prager's Monitoring Officer. On August 22, 2017, Dr. Goldberg wrote her third Monitoring Report about Dr. Prager's compliance with her recommendations which included the following observations:

- Dr. Prager completed the College's Recordkeeping Course on May 29, 2015;
- Dr. Prager implemented all recommendations from the previous two monitoring reports;
- Dr. Goldberg had no concerns with respect to Dr. Prager's recordkeeping;

- All Dr Prager's patient charts were in compliance with the College's Guidelines as outlined in Dental Recordkeeping (2008).
50. Notably, Dr. Goldberg had no recommendations arising from her review of Dr. Prager's records.
51. On July 3, 2018, Dr. Goldberg wrote her fourth Monitoring Report, and noted that Dr. Prager had purchased a dental practice approximately five weeks prior to Dr. Goldberg's attendance. Dr. Goldberg randomly selected twelve client files for review. She found no concerns with recordkeeping. Specifically she found that Dr. Prager followed the following recordkeeping protocols:
- Prior to the start of all appointments the medical history is reviewed and changes to medication or the absence thereof are noted;
 - All interventions such as full periodontal probing, odontogram, intra/extra oral examinations, oral cancer screening, TMJ, occlusal assessments, scaling and polishing were completed and well documented;
 - There was also documentation respecting the communication to the patient about their periodontal diagnosis and how the patient could improve their periodontal health.
52. Dr. Goldberg had no formal recommendations. She noted, however, that Dr. Prager did not take radiographs for the patients reviewed. Dr. Prager explained that the practice she just purchased had only traditional radiographs and she was waiting to purchase digital radiographs. Dr. Goldberg advised Dr. Prager to use the traditional radiographs in the meantime and Dr. Prager said she understood and would follow the recommendation.
53. Pursuant to the April 2015 Order of the Discipline Committee, Dr. Prager and the College agreed that Dr. Lorne Chapnick would be her mentor to replace the prior mentor who had withdrawn. From January 2017 to August 2017, Dr. Chapnick attended at Dr. Prager's practice once a month and reviewed her charts and record keeping. In addition, Dr. Prager and Dr. Chapnick discussed any issues Dr. Prager wished to discuss. Dr. Chapnick reported monthly to the College.

54. On June 21, 2017, July 11, 2017 and August 16, 2017, the College wrote to Dr. Prager and informed her that the panel had reviewed the monitoring reports of Dr. Chapnick. Each letter further states:

The panel was pleased with your progress to date and it looks forward to receiving Dr. Chapnick's report following the next session.

55. The College was satisfied with the progress of the mentoring relationship. On September 20, 2017, the College wrote to Dr. Chapnick and informed him that the frequency of his reports on Dr. Prager's practice could be reduced to once a year.

Psychiatric Assessment

56. Dr. Prager underwent a full psychiatric assessment by her own psychiatrist in appointments during the months prior to the hearing in this matter. The psychiatrist was provided with a record regarding her prior discipline at the College and the circumstances regarding the current discipline proceeding.
57. The psychiatrist noted that for the first time in his history with Dr. Prager she is attending psychotherapy with a clinical psychologist employed by his clinic. Dr. Prager is also taking medication [REDACTED] for [REDACTED] [REDACTED] [REDACTED] [REDACTED].
58. Dr. Prager has committed to complying with all treatment recommendations by the psychiatrist.

Practice Mentor

59. Dr. Prager has continued to meet with a practice mentor approved by the College in accordance with the order of the Discipline Committee issued at the hearing in April 2015. The practice mentor has also reported to the College as required.

Admissions of Professional Misconduct

60. Dr. Prager admits that she committed the acts of professional misconduct as alleged in the Notice of Hearing dated April 17, 2017, except that she does not admit that she is ungovernable.
61. In particular, Dr. Prager admits that she charged a fee that was excessive or unreasonable in relation to the service performed

relative to her patient, N.M., as alleged in paragraph 1 of the Notice of Hearing.

62. Dr. Prager also admits that she failed to comply with an Order of a panel of the Discipline Committee as alleged in paragraph 2 of the Notice of Hearing.
63. Dr. Prager also admits that she failed to reply appropriately or within a reasonable time to a written inquiry made by the College, as alleged in paragraph 3 of the Notice of Hearing.
64. Dr. Prager also admits that she 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 as alleged in paragraph 4 of the Notice of Hearing, except that she does not admit that she is ungovernable.

DECISION

Having considered the evidence and submissions of the parties, the Panel found that the Member has committed professional misconduct as alleged in the Notice of Hearing. The Panel makes no finding regarding the particular in allegation #4 as to the Member being ungovernable.

REASONS FOR DECISION

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

The Panel accepts through the Member's own admission and on the evidence contained in the Agreed Statement of Facts that Dr. Prager committed professional misconduct in that she failed to refund a \$1,600 deposit to her former patient in respect of a service that was never performed. Dr. Prager further admitted, and the Agreed Statement of Facts proves, that she failed to co-operate with the College's investigation and failed to provide the requested patient records in a timely manner. Dr. Prager also admitted, and the Agreed Statement of Facts establishes, that she violated a prior order of the Discipline Committee of the College. Finally, Dr. Prager admitted she 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. That admission is supported by the Agreed

Statement of Facts. The particulars of these findings are described in the Notice of Hearing and Agreed Statement of Facts, as set out above.

PENALTY SUBMISSIONS

The parties presented the Panel with a Joint Submission with respect to Penalty and Costs, which provides as follows.

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded immediately following the hearing on November 23, 2018.
2. The Registrar shall impose the following terms, conditions and limitations on the Member's certificate of registration ("the Conditions") requiring:
 - (a) the Member to continue her treatment with Dr. [REDACTED] or other psychiatrist approved by the Registrar ("the Psychiatrist"), and:
 - (i) to comply with all treatment and recommendations for as long as the treatment may be recommended by the Psychiatrist;
 - (ii) to authorize the Registrar to notify the Psychiatrist promptly regarding any complaint or other notification of concern to the College regarding the Member's conduct, in addition to notification to the Member herself, and to authorize the Psychiatrist to consult with the Registrar regarding the Member's response to the complaint or other concern of the College regarding the Member's conduct; and
 - (iii) to authorize the Psychiatrist to report regularly to the Registrar, as may reasonably be requested by the Registrar, regarding any changes to the Member's psychiatric condition, her compliance or non-compliance with the treatment recommendations, and her response to any complaint or other concerns of the College regarding the Member's conduct, with the obligation to ensure that the Psychiatrist responds fully and promptly to the Registrar's request being the responsibility of the Member;

- (iv) should the Psychiatrist fail to respond fully and promptly to the Registrar's request for a report, the College shall notify the Member and provide her with thirty (30) days to provide an explanation for why the Psychiatrist has not responded. The Member's certificate of registration shall not be suspended pursuant to subparagraph 2(d) below if:
 - A. the Psychiatrist's failure to respond to the Registrar's request for a report is due to illness, an accident causing infirmity, death, or other reason acceptable to the Registrar, and
 - B. the Member provides an explanation in writing regarding a reason acceptable to the Registrar, within thirty (30) days of the College's notification to the Member that the Psychiatrist has not responded, and either,
 - I. the Psychiatrist provides the report as requested by the Registrar within thirty (30) days of the College's notification to the Member that the Psychiatrist has failed to respond to the Registrar's request for a report, or
 - II. the Member makes all reasonable efforts to find an alternative psychiatrist, notifies the Registrar in writing that she is doing so within thirty (30) days of the College's notification to the Member that the Psychiatrist has failed to respond to the Registrar's request for a report, and further notifies the Registrar in writing immediately upon finding an alternative psychiatrist to meet the treatment and reporting obligations set out in subparagraphs 2 (a) (i), (ii) and (iii) above, such time to find an alternative psychiatrist not to exceed ninety (90) days from the College's notification to the Member that the Psychiatrist has failed to respond to the Registrar's request for a report;
- (b) the Member to continue the arrangement for practice mentoring and cooperate fully with Dr. Lorne Chapnick or

other dentist approved by the Registrar (“the Practice Mentor”), at her own expense, and:

- (i) to meet with the Practice Mentor at the Member’s office at intervals of not less than three (3) months, or more frequently if recommended by the Practice Mentor, to address the practice issues identified in this discipline proceeding and the Member’s prior discipline proceedings, including that the Member must:
 - adhere to the College’s Guideline: Recordkeeping;
 - adhere to the College’s Practice Advisory: Release and Transfer of Patient Records;
 - complete all dental records contemporaneously with the treatment provided;
 - keep all dental records at the dental office and not at her home; and
 - respond promptly and thoroughly to inquiries or requests from the College;
- (ii) to implement the Practice Mentor’s recommendations in a timely fashion and to maintain such changes to the satisfaction of the Registrar;
- (iii) to authorize the Registrar to notify the Practice Mentor promptly regarding any complaint or other notification of concern to the College regarding the Member’s conduct, in addition to notification to the Member herself, and to authorize the Practice Mentor to consult with the Registrar regarding the Member’s response to the complaint or other concern of the College regarding the Member’s conduct; and
- (iv) to authorize the Practice Mentor to report promptly if the Practice Mentor ceases to act in that capacity or the Member fails to implement a practice recommendation of the Practice Mentor, or as may reasonably be requested by the Registrar regarding the Member’s response to a complaint or other concern of the College regarding the Member’s conduct, and at least annually to confirm that the Member has continued to participate in the practice mentoring and has complied with any practice

recommendations, with the obligation to ensure that the Practice Mentor reports as required, and any costs associated with the Practice Mentor's reports, being the responsibility of the Member;

- (c) the Member's practice to be monitored by the College by means of inspection(s) by a representative or representatives of the College, on Notice to the Member, at such time or times as the College may determine, with the Member to cooperate with the College during the inspections and, further, to pay to the College in respect of the cost of monitoring, the amount of \$1,000.00 per inspection, such amount to be paid immediately after completion of each of the inspections, provided that the Member shall not be required to pay more than the cost of two such inspections for each twelve (12) month period following the hearing on November 23, 2018;
 - (d) the Registrar to suspend the Member's certificate of registration immediately in the event that, in the opinion of the Registrar, she fails to comply with any of the Conditions in subparagraphs 2(a)-(c) above, with the suspension to continue in effect until such time as the Member can demonstrate to the satisfaction of the Registrar that she is complying with the Conditions; and
 - (e) the Conditions imposed by virtue of subparagraphs 2(a)-(d) above may be removed from the Member's certificate of registration at the discretion of the Registrar, and the Member may apply to the Registrar to have the Conditions removed but no sooner than sixty (60) months following the hearing on November 23, 2018.
3. Requiring the Member to pay costs to the College in the amount of \$12,500.00, with \$1,000.00 payable on the date of the hearing and the balance of \$11,500.00 to be paid by monthly installments of not less than \$500.00 each commencing on January 23, 2019 and continuing until the full amount has been paid.

Both parties submitted that the proposed penalty should be accepted by the Panel and reminded the Panel of the high threshold for setting aside a Joint Submission. Counsel submitted that this is a unique case that presents a unique challenge in crafting a penalty that would achieve the goals of penalty and protection of the public interest. Several factors have to be balanced, including

the seriousness of the misconduct, the objectives of penalty such as deterrence, remediation and public protection, and public confidence in the profession.

Two related incidents of misconduct are identified in the Agreed Statement of Facts: the patient complaint about Dr. Prager's failure to return \$1,600 advanced to her for services that ultimately were not performed, and Dr. Prager's failure to deliver patient records as requested by the College. Counsel submitted that the misconduct in this case is serious, but principally from a regulatory perspective – it did not involve any patient harm.

Dr. Prager has an extensive discipline record with the College. College counsel explained that the common themes that run through most of the prior decisions are record keeping issues and Dr. Prager's inability to respond promptly and appropriately to the College. Dr. Prager does eventually respond to the College but not promptly and thoroughly as is expected. At no point was there ever any concern regarding the quality of dental care Dr. Prager provided to her patients. College counsel submitted that the College's response would have been decidedly different had patient care been of any concern or if there had been any dishonesty on the part of Dr. Prager.

The College has had concerns for some time about Dr. Prager's failure to respond to requests of the College. Dr. Prager was initially very resistant to submitting to any psychiatric assessment. It was only after a panel of this Discipline Committee ordered revocation of her certificate of registration in 2006 that a proper psychiatric assessment was completed and offered some explanation for Dr. Prager's conduct. Following that psychiatric assessment and the treatment recommendations made, Dr. Prager's certificate of registration was re-instated by a consent order in her appeal from the revocation order. The psychiatrist's report identified issues such as [REDACTED].

Dr. Prager's counsel noted that Dr. Prager has accepted the diagnosis and has worked to change and improve her approach to therapy and her relationship with the College. She dedicated herself to therapy and is working with both a psychiatrist and a psychologist. She has started taking medication [REDACTED]. Her therapy is ongoing and will continue in accordance with the terms set out in the Joint Submission. Dr. Prager has a mentor and a practice monitor and has responded to both the mentor and the monitor appropriately at all times. The practice monitor's reports have indicated that Dr. Prager's record keeping complies with the College's expectations and her mentor is pleased with her practice as is outlined in his reports to the College.

Both counsel explained that the emphasis of the Joint Submission is on remediation for Dr. Prager. Dr. Prager underwent a psychological assessment

and was diagnosed with [REDACTED]. That psychological response presents a difficult situation for the College as the regulator of the profession that relies on the prompt and appropriate response from its members to its inquiries. The College accepted the psychiatrist's assessment of Dr. Prager. College counsel noted that if this had been a case failure to cooperate because of a poor attitude, a cover-up or a disregard for the regulator, the outcome would have been different.

College counsel submitted that the Joint Submission is truly innovative in its approach. One of the terms of the Joint Submission is that the College is authorized to notify not only the Member, but also her psychiatrist and her practice mentor should the College receive any complaint about the Member. Notifying Dr. Prager's psychiatrist and practice mentor allows them to assist in ensuring that Dr. Prager complies with the College's expectation of a prompt and appropriate response to all inquiries.

The penalty goal of deterrence was limited in this case as there was no suspension proposed that may have otherwise been justified. The deterrence in this case is the strict terms and limitations imposed on Dr. Prager, as well as the public reprimand.

Counsel submitted that the public interest is appropriately addressed. No patient care issues were identified and Dr. Prager has rectified her record keeping issues. She has been compliant with her psychiatrist's treatment recommendations. Dr. Prager's mentor and practice monitor are both pleased with her results and their reviews have been favourable. Counsel also submitted that this innovative penalty lets the profession know that the regulator is open to providing accommodation should it be warranted on all the facts of a particular case.

PENALTY DECISION

The Panel accepted the Joint Submission with respect to Penalty and Costs and ordered that:

1. The Member shall appear before the Panel of the Discipline Committee to be reprimanded immediately following the hearing on November 23, 2018.
2. The Registrar shall impose the following terms, conditions and limitations on the Member's certificate of registration ("the Conditions") requiring:

- (a) the Member to continue her treatment with Dr. [REDACTED] or other psychiatrist approved by the Registrar (“the Psychiatrist”), and:
 - (i) to comply with all treatment and recommendations for as long as the treatment may be recommended by the Psychiatrist;
 - (ii) to authorize the Registrar to notify the Psychiatrist promptly regarding any complaint or other notification of concern to the College regarding the Member’s conduct, in addition to notification to the Member herself, and to authorize the Psychiatrist to consult with the Registrar regarding the Member’s response to the complaint or other concern of the College regarding the Member’s conduct; and
 - (iii) to authorize the Psychiatrist to report regularly to the Registrar, as may reasonably be requested by the Registrar, regarding any changes to the Member’s psychiatric condition, her compliance or non-compliance with the treatment recommendations, and her response to any complaint or other concerns of the College regarding the Member’s conduct, with the obligation to ensure that the Psychiatrist responds fully and promptly to the Registrar’s request being the responsibility of the Member;
 - (iv) should the Psychiatrist fail to respond fully and promptly to the Registrar’s request for a report, the College shall notify the Member and provide her with thirty (30) days to provide an explanation for why the Psychiatrist has not responded. The Member’s certificate of registration shall not be suspended pursuant to subparagraph 2(d) below if:
 - A. the Psychiatrist’s failure to respond to the Registrar’s request for a report is due to illness, an accident causing infirmity, death, or other reason acceptable to the Registrar, and
 - B. the Member provides an explanation in writing regarding a reason acceptable to the Registrar, within thirty (30) days of the College’s notification to the Member that the Psychiatrist has not responded, and either,
 - I. the Psychiatrist provides the report as requested by the Registrar within thirty (30) days of the College’s notification to the Member that the Psychiatrist has

failed to respond to the Registrar's request for a report, or

- II. the Member makes all reasonable efforts to find an alternative psychiatrist, notifies the Registrar in writing that she is doing so within thirty (30) days of the College's notification to the Member that the Psychiatrist has failed to respond to the Registrar's request for a report, and further notifies the Registrar in writing immediately upon finding an alternative psychiatrist to meet the treatment and reporting obligations set out in subparagraphs 2 (a) (i), (ii) and (iii) above, such time to find an alternative psychiatrist not to exceed ninety (90) days from the College's notification to the Member that the Psychiatrist has failed to respond to the Registrar's request for a report;
- (b) the Member to continue the arrangement for practice mentoring and cooperate fully with Dr. Lorne Chapnick or other dentist approved by the Registrar ("the Practice Mentor"), at her own expense, and:
- (i) to meet with the Practice Mentor at the Member's office at intervals of not less than three (3) months, or more frequently if recommended by the Practice Mentor, to address the practice issues identified in this discipline proceeding and the Member's prior discipline proceedings, including that the Member must:
 - adhere to the College's Guideline: Recordkeeping;
 - adhere to the College's Practice Advisory: Release and Transfer of Patient Records;
 - complete all dental records contemporaneously with the treatment provided;
 - keep all dental records at the dental office and not at her home; and
 - respond promptly and thoroughly to inquiries or requests from the College;
 - (ii) to implement the Practice Mentor's recommendations in a timely fashion and to maintain such changes to the satisfaction of the Registrar;

- (iii) to authorize the Registrar to notify the Practice Mentor promptly regarding any complaint or other notification of concern to the College regarding the Member's conduct, in addition to notification to the Member herself, and to authorize the Practice Mentor to consult with the Registrar regarding the Member's response to the complaint or other concern of the College regarding the Member's conduct; and
 - (iv) to authorize the Practice Mentor to report promptly if the Practice Mentor ceases to act in that capacity or the Member fails to implement a practice recommendation of the Practice Mentor, or as may reasonably be requested by the Registrar regarding the Member's response to a complaint or other concern of the College regarding the Member's conduct, and at least annually to confirm that the Member has continued to participate in the practice mentoring and has complied with any practice recommendations, with the obligation to ensure that the Practice Mentor reports as required, and any costs associated with the Practice Mentor's reports, being the responsibility of the Member;
- (c) the Member's practice to be monitored by the College by means of inspection(s) by a representative or representatives of the College, on Notice to the Member, at such time or times as the College may determine, with the Member to cooperate with the College during the inspections and, further, to pay to the College in respect of the cost of monitoring, the amount of \$1,000.00 per inspection, such amount to be paid immediately after completion of each of the inspections, provided that the Member shall not be required to pay more than the cost of two such inspections for each twelve (12) month period following the hearing on November 23, 2018;
- (d) the Registrar to suspend the Member's certificate of registration immediately in the event that, in the opinion of the Registrar, she fails to comply with any of the Conditions in subparagraphs 2(a)-(c) above, with the suspension to continue in effect until such time as the Member can demonstrate to the satisfaction of the Registrar that she is complying with the Conditions; and
- (e) the Conditions imposed by virtue of subparagraphs 2(a)-(d) above may be removed from the Member's certificate of registration at the discretion of the Registrar, and the Member may apply to the Registrar to have the Conditions removed but no sooner than sixty (60) months following the hearing on November 23, 2018.

3. The Member shall pay costs to the College in the amount of \$12,500.00, with \$1,000.00 payable on the date of the hearing and the balance of \$11,500.00 to be paid by monthly installments of not less than \$500.00 each commencing on January 23, 2019 and continuing until the full amount has been paid.

REASONS FOR PENALTY DECISION

The Panel is aware that joint submissions should be respected unless they fall so far outside the range of an appropriate sanction that they would bring the administration of justice at the College into disrepute, or are otherwise contrary to the public interest. The Panel concluded that the jointly proposed penalty was appropriate in all circumstances of this case. It therefore accepted the Joint Submission and made an order in accordance with its terms.

All of the prior discipline decisions against Dr. Prager had similar themes of record keeping issues and a failure to respond to the College in a timely manner. The Panel found it highly significant that there were never any issues of patient care. The Panel would expect that, as noted by College counsel in his submissions, the College's response would have been quite different had it identified any patient care issues or dishonesty on the part of Dr. Prager.

This Panel wants to ensure that the public has confidence in the College's ability to regulate the profession in the public interest. The Panel is satisfied that public confidence will not be undermined by the order made in this case. Although a discipline finding against a member with an extensive discipline record will often warrant at least some period of suspension, this was indeed a unique case. Dr. Prager cooperated with the College and the parties worked together to craft a Joint Submission that is compassionate and tailored to the unique circumstances of this case, that provides for rehabilitation for Dr. Prager, and that will ensure public protection. The Joint Submission is very detailed and provides that if Dr. Prager fails to comply with its terms she will be suspended immediately. All of the conditions will continue in effect for five years. The terms of this Joint Submission demonstrate compassion for Dr. Prager and her mental health struggles while assuring the public that her mental health issues will continue to be addressed. Dr. Prager has come to accept her diagnosis and has worked to change and improve her approach to therapy and her relationship with the College. She has committed to therapy and is working with both a psychiatrist and psychologist. She has started taking medication [REDACTED]. Her therapy is ongoing and will continue in accordance with the terms set out in the Panel's order. Dr. Prager has a mentor and a practice monitor and has responded appropriately to them at all times. The monitor's reports have indicated her record keeping complies with the College's

expectations and the mentor's reports to the College demonstrate that he is pleased with her practice. The Panel is satisfied that the innovative penalty crafted in this case lets the profession know that the College is willing to be accommodating of its members should that be warranted on all the facts of the case.

At the conclusion of the discipline hearing on November 23, 2018, the Panel administered a public, oral reprimand to the Member in accordance with paragraph 1 of the Panel's order. A copy of the reprimand is attached to these Reasons for Decision.

I, Susan Davis, sign these Reasons for Decision as Chairperson of this Discipline Panel.

Susan Davis
Chairperson

December 18, 2018
Date

RCDSO v Dr. Claudette Prager

Oral Reprimand delivered November 23, 2018

Dr. Prager, 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 acts of professional misconduct. The misconduct related to a patient complaint about the return of money advanced for dental services not performed and your failure to respond in an appropriate and timely manner to your governing body.

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

Your professional misconduct in this instance and your lengthy discipline record with this College is a matter of concern. It is unacceptable to your fellow dentists and to the public.

The panel notes that there were no issues of patient care and the circumstances of this case are unique. We commend you on your commitment to seeking help for the issues identified and encourage you to stick with it to prevent a further recurrence of the issues that brought you here in the first place. We expect you to comply with the detailed terms of our order knowing what the consequences are if you don't.