

**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. MACIEK ZAJAC**, of the City of Brampton, in the Province of Ontario;

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

Members in Attendance: Ms. Susan Davis, Chair

Dr. Harpaul Anand

Ms. Margaret Dunn

Dr. Ben Lin

Dr. Peter Delean

BETWEEN:

**ROYAL COLLEGE OF DENTAL
SURGEONS OF ONTARIO**

- and -

DR. MACIEK ZAJAC

) Appearances:
)
) Ms. Luisa Ritacca
) Independent Counsel for the
) Discipline Committee of the Royal
) College of Dental Surgeons of Ontario
)
) Ms. Megan Shortreed
) For the Royal College of Dental
) Surgeons of Ontario
)
) Mr. Matthew Wilton
) For Dr. Maciek Zajac

Hearing held August 27, 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 August 27, 2018.

PUBLICATION BAN

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

THE ALLEGATIONS

The allegations against Dr. Maciek Zajac (the “Member”) were set out in a Notice of Hearing dated November 30, 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 2011-2015, you failed to keep records as required by the Regulations relative to the following patients, contrary to paragraph 25 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
A [REDACTED] J [REDACTED]	2012-2014
B [REDACTED] S [REDACTED]	2013
F [REDACTED] A [REDACTED]	2011-2012
R [REDACTED] B [REDACTED]	2013-2014
K [REDACTED] R [REDACTED]	2014
M [REDACTED] D [REDACTED] (aka M [REDACTED] G [REDACTED])	2012-2013
H [REDACTED] v [REDACTED]	2014
K [REDACTED] S [REDACTED]	2012
A [REDACTED] A [REDACTED]	2013, 2015
P [REDACTED] D [REDACTED]	
R [REDACTED] E [REDACTED] t	2013
B [REDACTED] O [REDACTED]	2014
J [REDACTED] K [REDACTED]	

W [REDACTED] C [REDACTED]	2011-2012
H [REDACTED] S [REDACTED]	2015
A [REDACTED] S [REDACTED]	2012-2013

Particulars:

- There were discrepancies in the records between the teeth/areas treated and the tooth numbers/areas documented in the records.
 - Incorrect areas/teeth were documented in the progress notes related to the placement of an implant for A [REDACTED] J [REDACTED] D [REDACTED] on or about November 12, 2012.
 - You documented that bone grafting was placed around the “14 [upper right 1st bicuspid] 15 [upper right 2nd bicuspid] implant sites” for B [REDACTED] S [REDACTED] in or about 2013, but the implant site appears to have been the 16 (upper right 1st molar) site.
 - Your records for the placement of implants on or about July 30, 2014, for K [REDACTED] R [REDACTED] listed incorrect tooth/position numbers.
 - You documented that you extracted tooth 36 (lower left 1st molar) for M [REDACTED] D [REDACTED] (aka M [REDACTED] G [REDACTED]) on or about March 9, 2012, but your progress notes for the same patient on or about February 15, 2012, indicated that this tooth was missing and had been removed previously.
 - The predetermination and, later, the claim you submitted for an onlay for H [REDACTED] v [REDACTED] in or about 2014 listed tooth 45 (lower right 2nd bicuspid), but tooth 35 (lower left 2nd bicuspid) was treated.
 - The predetermination you submitted for endodontic treatment for K [REDACTED] S [REDACTED] in or about June/July 2012 listed tooth 25 (upper left 2nd bicuspid), but tooth 24 (upper left 1st bicuspid) was treated and noted in the progress notes. Your odontogram on or about May 23, 2012, also noted a periapical lesion on tooth 25, but tooth 24 was listed in the progress notes.
 - You submitted a predetermination for the extraction of A [REDACTED] A [REDACTED]'s tooth 44 (lower right 1st bicuspid) on or about February 14, 2013, but you extracted tooth 45 (lower right 2nd bicuspid) on or about August 6, 2013.

- The records were not sufficiently detailed and/or documentation was missing from the records.
 - You did not document the reasons for placing bone grafts for F█████ A█████ on or about December 16, 2011, or for B█████ S█████ on or about December 13, 2013.
 - You did not retain the manufacturer's identification/tracking information for products used for connective tissue grafts for R█████ B█████ in or about December 2013 and July 2014.
 - You did not customize your progress notes to reflect the unique circumstances of each patient appointment. Your chart entries for R█████ B█████ regarding connective tissue grafting from December 2013 and July 2014 were very similar to each other, including spelling and/or typographical errors.
 - Your records for M█████ D█████'s (aka M█████ G█████) appointment on or about April 27, 2013, were inadequate as they did not include notes regarding the administration of nitrous oxide. You also documented that you obtained written consent for an extraction and bone grafting and for sedation with nitrous oxide, but the records did not include documentation of the patient's written informed consent.
 - Your progress notes did not document the justification for claiming a complicated extraction regarding the removal of B█████ S█████'s tooth 16 (upper right 1st molar) on or about June 17, 2013.
 - You claimed an onlay for tooth 35 (lower left 2nd bicuspid) for H█████ v█████ with a service date of June 16, 2014, but there were no progress notes for this date. It appears that the onlay was inserted (on tooth 45 (lower right 2nd bicuspid)) on July 16, 2014.
 - A periapical radiograph was found for A█████ D█████ dated on or about September 30, 2013, but there was no corresponding chart entry indicating that a radiograph was taken.
 - As you have acknowledged, your notes for the restorative treatment provided to A█████ J█████ on or about May 23, 2013, are not sufficiently detailed, as it was unclear whether tooth 23 (upper left cuspid) was restored or whether the bone between teeth 22 (upper left lateral incisor) and 23

(upper left cuspid) was reinforced.

- There were inconsistencies and/or lack of clarity in your records. In several instances, this made it difficult to determine the sequence of treatment.
 - It could not be determined what type of sutures were placed in association with the connective tissue grafts placed for R■■■■ B■■■■ in or about December 2013 and/or July 2014.
 - Your progress notes for M■■■■ D■■■■ (aka M■■■■ G■■■■) on or about April 27, 2013, document that you extracted the roots of tooth 36 (lower left 1st molar), but the post-operative periapical radiograph showed that the lesion/roots of the tooth were still present.
 - You claimed for two crowns for F■■■■ A■■ with a service date on or about February 21, 2012, but the progress notes indicate that the teeth were prepared for crowns on that date and that the crowns were inserted on or about September 19, 2012.
 - You indicated on or about April 1, 2015, that you inserted a crown for A■■■■ A■■■■. The code you used was for a crown on a natural tooth, but the site on which the crown was placed was an implant rather than a natural tooth.
- Laboratory invoices and prescriptions were missing or undated.
 - Your records for F■■■■ A■■, R■■■■ B■■■■, P■■■■ D■■, S■■■■, R■■■■ E■■■■, B■■■■ O■■■■, K■■■■, R■■■■, H■■■■ v■■■■, J■■■■ K■■ and B■■ S■■■■ contain undated laboratory prescriptions.
 - Your records for K■■■■ R■■■■ contained laboratory prescriptions that were incomplete in that they did not indicate the relevant tooth numbers for a bridge and crowns.
 - Your records for A■■■■ A■■■■, W■■■■ C■■■■, R■■■■ E■■■■, A■■ J■■■■-D■■■■, B■■■■, O■■■■, H■■■■ S■■■■, A■■■■ S■■■■ and F■■■■ A■■ contained laboratory invoices but not the corresponding laboratory prescriptions.
- You treated the same patients in multiple offices and kept multiple sets of records, such that it appeared you did not have your patients' complete records available to you while treating them at any one practice location and such that you failed to disclose all of your

records to the College during its investigation into this matter when they were originally requested.

2. *Withdrawn.*

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 years 2011 and 2013-2015, you charged a fee that was excessive or unreasonable in relation to the service performed relative to the following patients, contrary to paragraph 31 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
M■■■■■■ D■■■■■■ (aka M■■■■■■ G■■■■■)	2013
F■■■■■■ A■■	2011
W■■■■■■ C■■■■■■ i	2011
B■■■■■■ O■■■■■■	2013
B■■■■ S■■■■■■	2014
A■■■■■■ A■■■■■■	2015
R■■■■■■ B■■■■■■	2013-2015
K■■■■■■ R■■■■■■	2013
H■■■■ v■■■■■■	2014

Particulars:

- You claimed eight units of nitrous oxide/oxygen for M■■■■■■ D■■■■■■ (aka M■■■■■■ G■■■■■) on or about April 27, 2013, but had no documentation of the provision of nitrous oxide/oxygen.
- You claimed the same fee code and fees for every tooth when extracting multiple teeth in the same quadrant for F■■■■■■ A■■ on or about December 16, 2011, W■■■■■■ C■■■■■■ on or about December 20, 2011, and B■■■■■■ O■■■■■■ on or about December 12, 2013.
- You claimed the maximum fee for a specific examination of B■■■■ S■■■■■■ on or about May 10, 2014, for which you made no progress notes.
- You claimed a periapical radiograph for A■■■■■■ A■■■■■■ on or about February 27, 2015, that was not diagnostic with respect to the apical areas of the teeth/implants of which you were taking the radiograph.
- You claimed a four-surface permanent restoration, not a temporary restoration, on the same date that an appointment was booked for

root canal therapy for the same tooth for the same patient. This occurred in the course of your treatment of R■■■■ B■■■■ on or about May 11, 2015.

- You did not reduce your fees for connective tissue grafts on adjacent teeth as set out in the ODA fee guide for R■■■■ B■■■■ on or about December 9, 2013, December 23, 2013, and July 31, 2014.
 - You claimed full endodontic fees for K■■■■ R■■■■ on or about June 17, 2013, after performing and claiming for a pulpotomy on the same tooth several weeks earlier on or about May 27, 2013.
 - You issued a claim for H■■■■ v■■■■ on or about June 16, 2014, for an onlay, but there was no chart entry or apparent appointment for the patient on that date.
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 years 2012-2014, you submitted an account or charge for dental services that you knew or ought to have known was false or misleading relative to the following patients, contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
K■■■■ S■■■■	2012-2013
F■■■■ A■■	2012
H■■■■ v■■■■	2014

Particulars:

- For K■■■■ S■■■■, you charged fees in or about December 2012 for implants that were placed in or about September 2012 and for abutments and crowns that were not inserted until January 2013.
 - For F■■■■ A■■, you charged fees in or about February 2012 for crowns that were not inserted until September 2012.
 - For H■■■■ v■■■■, you charged a fee for an onlay on or about June 16, 2014, at date for which there was no chart entry and where it did not appear the patient had an appointment.
5. 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 years 2012-2015, you accepted an amount in full payment of an account or charge that was less than the full amount of the account or charge submitted by you to a third party payer without making reasonable efforts to collect the balance from the patient or to obtain the written consent of the third party payer relative to the following patients, contrary to paragraph 34 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

<u>Patients</u>	<u>Year(s)</u>
R■■■ C■■■	2014
A■■■ D■■■■i	2012-2015
M■■■■ D■■■■ (aka M■■■ G■■■)	2012-2013
H■■■ v■■■■	2012

Particulars:

- You wrote off co-payments in fourteen instances for four patients, named as follows, between February 2012 and January 2015, and there was no indication that you attempted to collect any of these co-payments:
 - R■■■ C■■■ (service date on or about July 18, 2014)
 - A■■■ D■■■■ (service dates on or about May 4, 2012; May 25, 2012; October 19, 2012; May 22, 2013; June 11, 2014; and January 7, 2015)
 - M■■■■ D■■■■ (aka M■■■ G■■■) (services dates on or about February 15, 2012; July 27, 2012; November 23, 2012; February 27, 2013; and May 14, 2013)
 - H■■■ v■■■■ (service dates on or about May 23, 2012, and June 20, 2012)

THE MEMBER'S PLEA

The College sought leave to withdraw allegation 2 in the Notice of Hearing, with the consent of the Member. The panel granted the leave as requested. The Member admitted allegations 1, 3, 4 and 5 of professional misconduct in the Notice of Hearing. The Member also made admissions in writing in an Agreed Statement of Facts, which he signed.

The Panel conducted a plea inquiry at the hearing, and was satisfied that the Member's admissions 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 (the attachments and references to them have been omitted).

Background

1. Dr. Maciek Zajac (or the "Member") has been registered with the College as a general dentist since 1998.
2. He owns and operates three dental practices: Ray Lawson Dentistry (in Brampton); Waterfall Dental (in Mississauga); and Millennium Dental (in Brampton).

The Notice of Hearing

3. The allegations of professional misconduct against the Member are set out in the Notice of Hearing dated November 30, 2017 (attached at Tab A).
4. The College and the Member have agreed to resolve the allegations on the basis of the facts and admissions set out below.

Withdrawal

5. The College is not proceeding with respect to Allegation 2 in the Notice of Hearing. Accordingly, with leave of the Discipline Committee, the College withdraws Allegation 2.
6. With respect to the remaining allegations, Dr. Zajac admits only those particulars as set out below.

Facts and Admissions

7. The facts giving rise to the allegations of professional misconduct in the current matter came to the attention of the College from a previous employee of Dr. Zajac's in January 2015, in which she alleged ongoing fraudulent behaviour by Dr. Zajac across his three practices with respect to

billing and insurance claims.

8. In particular, the employee stated that Dr. Zajac: claimed implants as bone grafting for insurance purposes, because implants were not covered under insurance; submitted claims at a later date for insurance coverage purposes; did not collect insurance co-payments; and charged excessive fees by claiming for maximum work insurance would cover regardless of work actually performed. The employee provided the College with examples of patient files with such issues, including files of staff who were also patients. The employee stated that staff members were aware of and complicit in the conduct.

9. On January 29, 2015, the Registrar proposed the appointment of investigators to conduct an investigation under s. 75(1)(a) of the Code regarding these concerns with respect to Dr. Zajac's practice. The ICRC approved this appointment on February 19, 2015.

10. A Senior Dental Consultant at the College attended all three of Dr. Zajac's dental practices in July 2015. During her visits, she interviewed all staff members present, and subsequently conducted telephone interviews with staff members who were not present during her visit. She obtained patient files and associated information in relation to staff members who were also patients, and a random sampling of patient files from other patients. The Senior Dental Consultant also obtained insurance information from GWL and Manulife Financial.

11. In total, 26 patient records were analyzed, as well as associated documentation (financial ledgers, appointment schedules, laboratory prescriptions and invoices).

12. After the investigator submitted her Report on Investigation to the ICRC, Dr. Zajac provided a response, through counsel, for the ICRC's consideration on August 25, 2017. With it, Dr. Zajac submitted further clinical records for one or more patients for whom the investigator had already been provided the patient file, stating they were "inadvertently missed when Dr. Zajac provided a large volume of patient records to the RCDSO".

A. Allegation 1 – Failure to Keep Records as Required

13. An examination of the patient files revealed recordkeeping issues in

respect of 16 patients between 2011 and 2015. In particular, Dr. Zajac admits that he failed to keep records as required in the following manner:

- there were discrepancies between the teeth/areas treated and tooth numbers/areas Dr. Zajac documented in the records with respect to the following 6 patients:
 - o Incorrect areas/teeth were documented in the progress notes related to the placement of an implant for A [REDACTED] D [REDACTED] on or about November 12, 2012.
 - o He documented that bone grafting was placed around the “14 [upper right 1st bicuspid] 15 [upper right 2nd bicuspid] implant sites” for B [REDACTED] S [REDACTED] in or about 2013, but the implant sites should have been noted as teeth 16 and 35.
 - o Records for the placement of implants on or about July 30, 2014 for K [REDACTED] R [REDACTED] listed incorrect tooth/position numbers.
 - o He documented extracted tooth 36 (lower left 1st molar) for M [REDACTED] D [REDACTED] (aka M [REDACTED] G [REDACTED]) on or about March 9, 2012, but progress notes for the same patient on or about February 15, 2012 indicated that this tooth was missing and had been removed previously.
 - o The predetermination he submitted for endodontic treatment for K [REDACTED] S [REDACTED] in or about June/July 2012 listed tooth 25 (upper left 2nd bicuspid), but tooth 24 (upper left 1st bicuspid) was treated and noted in the progress notes. The odontogram on or about May 23, 2012 also noted a periapical lesion on tooth 25, but tooth 24 was listed in the progress notes.
 - o The predetermination he submitted for the extraction of A [REDACTED] A [REDACTED]’s tooth 44 (lower right 1st bicuspid) on or about February 14, 2013, but tooth 45 (lower right 2nd bicuspid) was extracted on or about August 6, 2013.
- Dr. Zajac’s records were not sufficiently detailed with respect to 5 patients, as follows:
 - o Dr. Zajac did not document the reasons for placing bone grafts for F [REDACTED] A [REDACTED] on or about December 16, 2011.

- o Dr. Zajac did not retain the manufacturer's identification/tracking information for products used for connective tissue grafts for R■■■■ B■■■■ in or about December 2013 and July 2014.
- o Dr. Zajac did not customize progress notes to reflect the unique circumstances of each patient appointment. The chart entries for R■■■■ B■■■■ regarding connective tissue grafting from December 2013 and July 2014 were very similar to each other, including spelling and/or typographical errors.
- o Records for M■■■■ D■■■■'s (aka M■■■■ G■■■■) appointment on or about April 27, 2013 were inadequate as they did not include notes regarding the administration of nitrous oxide. Dr. Zajac also documented that he obtained written consent for an extraction and bone grafting and for sedation with nitrous oxide, but the records did not include documentation of the patient's written informed consent.
- o Dr. Zajac claimed an onlay for tooth 35 (lower left 2nd bicuspid) for H■■■■ v■■■■ with a service date of June 16, 2014, but there were no progress notes for this date, nor did a visit occur on that date. In fact, the onlay was inserted on tooth 45 (lower right 2nd bicuspid), and that occurred on July 16, 2014.
- o Notes for the restorative treatment provided to A■■■■ J■■■■ on or about May 23, 2013, are not sufficiently detailed, as it was unclear whether tooth 23 (upper left cuspid) was restored or whether the bone between teeth 22 (upper left lateral incisor) and 23 (upper left cuspid) was reinforced.
- There were inconsistencies and lack of clarity in Dr. Zajac's records which made it difficult to determine the sequence of treatment in respect of 3 patients, as follows:
 - o Progress notes for M■■■■ D■■■■ (aka M■■■■ G■■■■) on or about April 27, 2013 document that Dr. Zajac extracted the roots of tooth 36 (lower left 1st molar), but the post-operative periapical radiograph showed that the lesion/roots of the tooth were still present.

- o Dr. Zajac claimed for two crowns for F█████ A██ with a service date on or about February 21, 2012, but the progress notes indicate that the teeth were prepared for crowns on that date and that the crowns were inserted on or about September 19, 2012.
- o Dr. Zajac documented on or about April 1, 2015, that inserted a crown for A████ A████. The code used was for a crown on a natural tooth, but the site on which the crown was placed was an implant rather than a natural tooth.
- Dr. Zajac's records contained undated laboratory prescriptions in respect of 9 patients: F█████ A██, R████ B████, P██ D████, R████ E████, B████ O████, K████ R████, H████ v████, J██ K██ and B██ S████.
- Dr. Zajac's records contained laboratory prescriptions that were incomplete as they did not indicate the relevant tooth numbers for a bridge and crowns in respect of one patient, K████ R████.
- Dr. Zajac's records contained laboratory invoices but were missing the corresponding laboratory prescriptions in respect of 8 patients: A████ A████, W████ C████, R████ E████, A██ J████████, B████ O████, H████ S████, A████ S████ and F████ A██.
- Dr. Zajac treated the same patients in multiple offices and kept multiple sets of records, such that he did not have his patients' complete records available to him while treating them at any one practice location and such that he failed to disclose all of his records to the College during the investigation into this matter when they were originally requested.

15. Dr. Zajac acknowledges that he breached his professional, ethical and legal responsibilities that required him to maintain a complete record documenting all aspects of each patient's dental care, per the College's Dental Recordkeeping Guidelines, and s. 38 of Regulation 547.

16. Therefore, Dr. Zajac admits that he failed to keep records as required by the Regulations relative to the patients listed above, contrary to paragraph 25 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 1 of the Notice of Hearing.

B. Allegation 3 –Excessive or Unreasonable Fee in Relation to Services

17. The College's investigation identified several instances in which Dr. Zajac performed dental services for which the fees charged were excessive and unreasonable. Treatment was either billed but not performed or inappropriate fee codes were used in respect of 7 patients between 2011 and 2015.

18. Specifically, Dr. Zajac admits that he charged an excessive or unreasonable fee without justification, as follows:

- He claimed eight units of nitrous oxide/oxygen for M■■■■■ D■■■■■ (aka M■■■■■ G■■■■■) on or about April 27, 2013, but had no documentation of the provision of nitrous oxide/oxygen.
- He claimed the same fee code and fees for every tooth when extracting multiple teeth in the same quadrant for F■■■■■ A■■ on or about December 16, 2011, W■■■■■ C■■■■■ on or about December 20, 2011, and B■■■■■ O■■■■■ on or about December 12, 2013, when the fee guide requires a lesser fee for every subsequent tooth treated in the same quadrant during the same appointment.
- He claimed the maximum fee for a specific examination of B■■■■■ S■■■■■ on or about May 10, 2014, for which he made no progress notes.
- He claimed a four-surface permanent restoration, not a temporary restoration, on the same date that an appointment was booked for root canal therapy for the same tooth for the same patient. This occurred in the course of treatment of R■■■■■ B■■■■■ on or about May 11, 2015.
- He claimed full endodontic fees for K■■■■■ R■■■■■ on or about June 17, 2013, after performing and claiming for a pulpectomy on the same tooth several weeks earlier on or about May 27, 2013.

19. Therefore, Dr. Zajac admits that he charged a fee that was excessive or unreasonable in relation to the service performed, contrary to paragraph 31 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 3 of the Notice of Hearing.

C. Allegation 4 – False or Misleading Accounts

20. The College's investigation identified inappropriate billings by Dr. Zajac involving 3 patients between 2012-2014, for which the insurance claims issued had dates that did not correspond with the actual treatment dates.

21. In particular, Dr. Zajac admits that the following accounts issued to the insurer were false or misleading:

- For K■■■■ S■■■■, Dr. Zajac made claims in or about December 2012 for implants that were placed in or about September 2012 and for abutments and crowns that were not inserted until January 2013.
- For F■■■■ A■■, Dr. Zajac made a claim in or about February 2012 for crowns that were not inserted until September 2012.
- For H■■■■ v■■■■, Dr. Zajac made a claim for an onlay on or about June 16, 2014, a date for which there was no chart entry and no appointment. In fact, the appointment was on July 16, 2014.

22. Therefore, Dr. Zajac admits that he submitted accounts or charges for dental services that he knew or ought to have known were false or misleading, contrary to paragraph 33 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 4 of the Notice of Hearing.

D. Allegation 5 – Failure to Collect Co-payments

23. Dr. Zajac admits that his patient records contained 14 incidents involving 4 patients between 2012-2015 in which he wrote off insurance co-payments with no indication in the file of having tried to collect payment from the patients, as follows:

- R■■■■ C■■■■ (service date on or about July 18, 2014).
- A■■■■ D■■■■ (service dates on or about May 4, 2012; May 25, 2012; October 19, 2012; May 22, 2013; June 11, 2014; and January 7, 2015).
- M■■■■ D■■■■ (aka M■■■■ G■■■■) (services dates on or about February 15, 2012; July 27, 2012; November 23, 2012; February 27, 2013; and May 14, 2013).

- H [REDACTED] v [REDACTED] (service dates on or about May 23, 2012, and June 20, 2012).

24. Therefore, Dr. Zajac admits that he accepted an amount in full payment of an account or charge that was less than the full amount of the account or charge submitted by him to a third party payer without making reasonable efforts to collect the balance from the patient or to obtain the written consent of the third party payer, contrary to paragraph 34 of Section 2 of the Dentistry Act Regulation, as set out in Allegation 5 of the Notice of Hearing.

Past History

25. Dr. Zajac has one previous finding by the Discipline Committee of the College.

26. In March 2012, Dr. Zajac was found by the Discipline Committee to have committed professional misconduct, including submitting claims with incorrect codes for insurance coverage purposes, writing off co-payments without trying to collect the payments, failing to keep records as required, and billing for unnecessary services or services not rendered.

27. The Discipline Committee imposed a reprimand, 4 month suspension, other terms and conditions on Dr. Zajac's certificate of registration, including requiring Dr. Zajac to complete a recordkeeping and ethics course, and ordered him to be subject to 2 years of practice monitoring. The decision of the Discipline Committee is attached at Tab B.

General

28. Dr. Zajac admits that the acts described above constitute professional misconduct and he now accepts responsibility for his actions and the resulting consequences.

29. Dr. Zajac has had the opportunity to take independent legal advice with respect to his admissions.

DECISION

Having considered the evidence and submissions of the parties, the Panel found that the Member committed professional misconduct as alleged in allegations 1, 3, 4 and 5 of the Notice of Hearing.

REASONS FOR DECISION

The Member pled guilty to the allegations of professional misconduct set out in paragraphs 1, 3, 4 and 5 of the Notice of Hearing as particularized in the Agreed Statement of Facts. Dr. Zajac did not dispute the facts presented in the Agreed Statement of Fact.

The Panel was satisfied that the evidence contained in the Agreed Statement of Facts clearly substantiated the allegations of professional misconduct.

Dr. Zajac failed to keep records as required. There were discrepancies between the teeth/areas treated and tooth number/area Dr. Zajac documented in the records with respect to 6 patients, the records were not sufficiently detailed with respect to 5 patients and there were inconsistencies, and a lack of clarity with respect to 3 patients which made it difficult to determine the sequence of treatment. There is a basic expectation that members keep accurate and fulsome records. Failure to do so, could potentially put patients at risk, making it difficult for a treating or subsequent dentist to have a complete picture of a patient's dental health and treatment history.

Dr. Zajac admitted that he charged an excessive or unreasonable fee without justification. Treatment was either billed but not performed or inappropriate fee codes were used in respect of 7 patients between 2011 and 2015. It is imperative for members of this profession to charge for only work that is actually performed and to charge appropriate amounts for work done. Neither patients nor their insurers should be taken advantage of by members.

Dr. Zajac admitted submitting accounts for 3 patients between 2012-2014 to an insurer that were false and misleading in that they had dates that did not correspond to the actual treatment dates. While the work was done, it appears that it was not done on the dates recorded for the insurer.

Dr. Zajac admitted his patient records contained 14 incidents involving 4 patients between 2012-2015 in which he wrote off insurance co-payments with no indication in his files of having tried to collect payment from the patients.

PENALTY SUBMISSIONS

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

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. Maciek Zajac ("Member") jointly submit that this panel of the Discipline Committee impose the following penalty on the Member as a result of the panel's finding that the Member is guilty of professional misconduct, namely, that it make an order:
 - (a) requiring the Member to appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
 - (b) directing the Registrar to suspend the Member's certificate of registration for a period of four (4) months, to be served consecutively, such suspension to commence within sixty (60) days of this Order becoming final;
 - (c) that the Registrar impose the following terms, conditions and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the Member's certificate of registration as referred to in subparagraph 1(b) above has been fully served, namely:
 - (i) while the Member's certificate of registration is under suspension, the Member shall not be present in his dental office(s) when patients are present, save and except for unforeseen non-patient related emergencies. Where the Member is required to attend for a non-patient related emergency, the Member shall immediately advise the Registrar of that fact including details of the nature of the emergency;
 - (ii) upon commencement of the suspension, the Member shall advise all of the Member's staff as well as any other dentist in the office(s) that the Member engages in practice with, whether that Member is a principal in the practice or otherwise associated with the practice, of the fact that the Member's certificate of registration is under suspension;
 - (iii) during the suspension, the Member shall not do anything that would suggest to patients that the Member is

entitled to engage in the practice of dentistry and shall ensure that the Member's staff is instructed not to do anything that would suggest to patients that the Member is entitled to engage in the practice of dentistry during the suspension;

(iv) the Member shall permit and co-operate with any office monitoring which the Registrar feels is appropriate in order to ensure that the Member has complied with this Order, and in the connection, the Member shall provide access to any records associated with the practice in order that the College can verify that the Member has not engaged in the practice of dentistry during the suspension; and

(v) the Suspension Conditions imposed by virtue of subparagraphs 1(c)(i)-(iv) above shall be removed at the end of the period the Member's certificate of registration is suspended.

(d) directing that the Registrar also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration (the "Practice Conditions"), namely:

(i) requiring that the Member successfully complete, at his own expense, a course in recordkeeping, billing and co-payments, including the use of billing codes, approved by the College, and provide proof of successful completion in writing to the Registrar within twelve (12) months of this Order becoming final;

(ii) the Member's practice shall be monitored by the College by means of office visit(s) by a representative or representatives of the College at such time or times as the College may determine with advance notice to the Member, during the period commencing with the date of this Order and ending twenty-four (24) months from the College receiving proof of the Member's successful completion of the course(s) referred to above, or until the Inquiries, Complaints and Reports Committee is satisfied that the Member has successfully completed the monitoring program, whichever date is later;

(iii) that the Member shall cooperate with the College during the office visit(s) and further, shall pay to the College in respect of the costs of monitoring, the amount of \$1,000.00 per office visit, such amount to be paid immediately after completion of each of the office visit(s);

(iv) that the representative or representatives of the College shall report the results of those office visit(s) to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;

(v) the Practice Conditions imposed by virtue of subparagraph (1)(d)(i) above shall be removed from the Member's certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the courses described in subparagraph (1)(d)(i) above have been completed successfully;

(vi) the Practice Condition imposed by virtue of subparagraph (1)(d)(ii) above shall be removed from the Member's certificate of registration twenty-four (24) months following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in subparagraph (1)(d)(i) above has been completed successfully, or upon receipt of written confirmation from the Inquiries, Complaints and Reports Committee that the Member has successfully completed the monitoring program, whichever date is later.

(e) that the member pay costs to the College in the amount of \$5,000 in respect of this discipline hearing, such costs to be paid in full within 90 days of this Order becoming final.

3. The College and the Member further submit that pursuant to the Code, as amended, the results of these proceedings must be recorded on the Register of the College and any publication of the Decision of the panel would therefore occur with the name and address of the Member included.
4. This joint submission on penalty and costs was reached as a result of a pre-hearing conference held with respect to these matters and it received the endorsement of the pre-hearing conference president.

Both parties submitted that the Panel should accept the proposed penalty.

PENALTY DECISION

The Panel understands that it is bound by the case law that makes clear that a joint submission should not be departed from unless accepting it would bring the

discipline process into disrepute or otherwise be contrary to the public interest. In light of this direction from the courts, the Panel carefully considered the parties' Joint Submission.

The Panel had some concerns as to whether the penalty proposed was reasonable in the circumstances and to that end asked the parties for further submissions. After hearing the parties' further submissions and upon further deliberation, the Panel accepted the Joint Submission with respect to Penalty and Costs and ordered that:

- (a) The Member is to appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
- (b) The Registrar is directed to suspend the Member's certificate of registration for a period of four (4) months, to be served consecutively, such suspension to commence within sixty (60) days of this Order becoming final;
- (c) The Registrar is to impose the following terms, conditions and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the Member's certificate of registration as referred to in subparagraph 1(b) above has been fully served, namely:
 - (i) while the Member's certificate of registration is under suspension, the Member shall not be present in his dental office(s) when patients are present, save and except for unforeseen non-patient related emergencies. Where the Member is required to attend for a non-patient related emergency, the Member shall immediately advise the Registrar of that fact including details of the nature of the emergency;
 - (ii) upon commencement of the suspension, the Member shall advise all of the Member's staff as well as any other dentist in the office(s) that the Member engages in practice with, whether that Member is a principal in the practice or otherwise associated with the practice, of the fact that the Member's certificate of registration is under suspension;

- (iii) during the suspension, the Member shall not do anything that would suggest to patients that the Member is entitled to engage in the practice of dentistry and shall ensure that the Member's staff is instructed not to do anything that would suggest to patients that the Member is entitled to engage in the practice of dentistry during the suspension;
 - (iv) the Member shall permit and co-operate with any office monitoring which the Registrar feels is appropriate in order to ensure that the Member has complied with this Order, and in the connection, the Member shall provide access to any records associated with the practice in order that the College can verify that the Member has not engaged in the practice of dentistry during the suspension; and
 - (v) the Suspension Conditions imposed by virtue of subparagraphs 1(c)(i)-(iv) above shall be removed at the end of the period the Member's certificate of registration is suspended.
- (d) The Registrar is directed to also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration (the "Practice Conditions"), namely:
 - (i) The Member is required successfully complete, at his own expense, a course in recordkeeping, billing and co-payments, including the use of billing codes, approved by the College, and provide proof of successful completion in writing to the Registrar within twelve (12) months of this Order becoming final;
 - (ii) the Member's practice shall be monitored by the College by means of office visit(s) by a representative or representatives of the College at such time or times as the College may determine with advance notice to the Member, during the period commencing with the date of this Order and ending twenty-four (24) months from the College receiving proof of the Member's successful completion of the course(s) referred to above, or until the Inquiries, Complaints and Reports Committee is satisfied that the Member has successfully completed the monitoring program, whichever date is later;

- (iii) that the Member shall cooperate with the College during the office visit(s) and further, shall pay to the College in respect of the costs of monitoring, the amount of \$1,000.00 per office visit, such amount to be paid immediately after completion of each of the office visit(s);
- (iv) that the representative or representatives of the College shall report the results of those office visit(s) to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;
- (v) the Practice Conditions imposed by virtue of subparagraph (1)(d)(i) above shall be removed from the Member's certificate of registration upon receipt by the College of confirmation in writing acceptable to the Registrar that the courses described in subparagraph (1)(d)(i) above have been completed successfully;
- (vi) the Practice Condition imposed by virtue of subparagraph (1)(d)(ii) above shall be removed from the Member's certificate of registration twenty-four (24) months following receipt by the College of confirmation in writing acceptable to the Registrar that the requirements set out in subparagraph (1)(d)(i) above has been completed successfully, or upon receipt of written confirmation from the Inquiries, Complaints and Reports Committee that the Member has successfully completed the monitoring program, whichever date is later.
- (e) that the member pay costs to the College in the amount of \$5,000 in respect of this discipline hearing, such costs to be paid in full within 90 days of this Order becoming final.
- (f) The results of these proceedings must be recorded on the Register of the College and any publication of the Decision of the panel will therefore occur with the name and address of the Member included.

REASONS FOR PENALTY DECISION

As set out above, in reaching its decision, the Panel was primarily guided by the fact that it should not depart from a joint submission on penalty unless to accept the penalty would bring the discipline process into disrepute or otherwise be contrary to the public interest.

The Panel was advised that Dr. Zajac had been found to have committed professional misconduct in 2012. In that instances, the findings against him included submitting claims with incorrect codes for insurance coverage purposes, writing off co-payments without trying to collect the payments, failing to keep records as required, and billing for unnecessary services or services not rendered. In that case, the Discipline Committee imposed a reprimand, a 4 month suspension and other terms and conditions, including requiring Dr. Zajac to complete a recordkeeping and ethics course, and ordered that he be subject to 2 years of practice monitoring.

Some members of the Panel were initially concerned that the proposed Joint Submission on Penalty was too lenient given that Dr. Zajac had previously been found guilty of professional misconduct for very similar issues. The Panel, after lengthy deliberation, reflected on the submissions of Counsel for the College and Dr. Zajac and accepted that the proposed penalty was within the appropriate range for professional misconduct of this nature. The Panel took a number of considerations into account when reaching this decision.

While it was clear to the Panel that Dr. Zajac had not learned from his previous experience and that he was back before the Discipline Committee on some similar allegations, it was also clear that the matter in 2012 was more serious. In that earlier case, the Member was found to have provided unnecessary dental services. His actions were knowingly and materially deceptive in the prior case. The Panel was of the view that although some of the allegations were the same, the admitted facts in the present case were less serious. For example, the Member's failure to keep records appears to have been the result of sloppiness and a lack of attention to detail. His actions were not intended to deceive or defraud. . Also, with respect to the finding that the Member charged excessive fees, it is clear that he actually did the work but used the wrong billing codes.

Ultimately, the Panel was satisfied that the penalty proposed would not bring the administration of the discipline process into disrepute or is otherwise contrary to public policy.

The penalty in this case is appropriate given the matrix of facts before the Panel. Dr. Zajac cooperated with the College and entered into a plea agreement. The 4 month suspension is both a general and specific deterrent. This suspension is a significant financial penalty for the Member and it sends a clear message to members of the profession that this type of behavior will not be tolerated. The courses and monitoring provisions of the penalty will aid in the Member's rehabilitation and the protection of the public.

The Panel is satisfied that all goals of Penalty Orders have been met and that the public will be adequately protected.

At the conclusion of the discipline hearing on August 27, 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

October 11, 2018

Date

SCHEDULE A REPRIMAND

Reprimand for Dr. Maciek Zajac

August 27, 2018

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

The fact 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 you have engaged in acts of professional misconduct. The misconduct related to your:

- failure to keep records
- excessive or unreasonable fees charged
- misleading or false accounts
- failure to collect co-payments

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

Of special concern to us is the fact that the professional misconduct in which you engaged has involved some of the very same issues that brought you before a discipline committee in 2011. It is truly disappointing to us that after having completed record keeping and ethics courses and practice monitoring you ended up before the Discipline Committee once again. We expect you to reflect upon your mistakes, and use this remediation opportunity to improve your practice to meet the standards of the profession.

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

Thank you for attending today. We are adjourned.