

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. NELLY HIMELL**, of the City of Toronto, in the Province of Ontario;

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

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

NOTICE OF PUBLICATION BAN

This is formal notice that on December 4, 2020, the panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario made an Order directing that no person shall publish or broadcast the identity of any patients of the Member, or any information that could disclose the identity of any patients who are named in the Notice of Hearing and/or the Agreed Statement of Facts in this matter.

This Order is made pursuant to subsection 45(3) of the *Code*.

Subsection 93(1) of the *Code* reads:

93(1) Every person who contravenes an order made under subsection 7(3) or Section 45 or 47, or who contravenes subsection 76(3), 82(2) or (3), 85.2(1), 85.5(1) or (2) or 85.14(2) or Section 92.1 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.



Dr. Richard Hunter, Chair
Discipline Panel

December 4, 2020

Date

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

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

Members in Attendance: Dr. Richard Hunter
 Dr. Elliott Gnidec
 Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO)	Appearances:
)	
)	Andrea Gonsalves
)	Independent Counsel for the
)	Discipline Committee of the Royal
)	College of Dental Surgeons of Ontario
- and -)	
)	Dayna Simon
)	For the Royal College of Dental
)	Surgeons of Ontario
)	
DR. NELLY JUTKOWICZ HIMELL)	Member self-represented
)	

Hearing held by way of videoconference

REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the Royal College of Dental Surgeons of Ontario (the “College”) in Toronto on December 4, 2020. This matter was heard electronically.

At the outset of the hearing, the College sought an order banning the publication of the names of patients or any information that could be used to identify the patients. The Member consented to the request. The Panel granted the order, which extends to the exhibits filed, as well as to these reasons for decision.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing, dated September 12, 2019 (Exhibit 1). The Allegations as set out in the Notice of Hearing are as follows:

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, in or about June of 2014, you falsified a record related to your practice in relation to the service performed relative to one of your patients, namely [D.A.], contrary to paragraph 26 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- On June 2, 2014, Dr. Himell submitted a claim to Sun Life Financial for treatment performed on her patient, [D.A.] that had actually occurred on May 8, 2014. The claim had been submitted and denied on the actual date of treatment but was allowed with this new date of June 2, 2014, which was not when treatment was rendered.
 - Dr. Himell altered her records for [D.A.] by crossing out the date of May 8, 2014, the date that the treatment was rendered, and correcting it to June 2, 2014, to support her fraudulent submission.
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, in or about June of 2014, you signed or issued a certificate, report or similar document that you knew or ought to have known contained a false, misleading or improper statement, contrary to paragraph 28 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- On June 2, 2014, Dr. Himell submitted a claim to Sun Life Financial for treatment performed on her patient, [D.A.] that had actually occurred on May 8, 2014. The claim had been submitted and denied on the actual date of treatment but was allowed with this new date of June 2, 2014, which was not when treatment was rendered.
 - In responding to Sun Life's request for further information from Dr. Himell about these two identical claims less than a month apart, Dr. Himell wrote that the treatment had in fact occurred on June 2, 2014, and that the May 8, 2014 submissions was intended as a pre-determination but had erroneously been submitted as a claim. This was not true and Dr. Himell knew this not to be true.
 - Dr. Himell altered her records for [D.A.] by crossing out the date of May 8, 2014, the date that the treatment was rendered, and correcting it to June 2, 2014, to support her fraudulent submission and deceptive response to Sun Life.
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, in or about June of 2014, you submitted an account or charge for dental services that you knew or ought to have known was false or misleading, contrary to paragraph 33 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- On June 2, 2014, Dr. Himell submitted a claim to Sun Life Financial for treatment performed on her patient, [D.A.] that had actually occurred on May 8, 2014. The claim had been submitted and denied on the actual date of treatment

but was allowed with this new date of June 2, 2014, which was not when treatment was rendered.

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 [D.A.], contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars:

- On June 2, 2014, Dr. Himell submitted a claim to Sun Life Financial for treatment performed on her patient, [D.A.] that had actually occurred on May 8, 2014. The claim had been submitted and denied on the actual date of treatment but was allowed with this new date of June 2, 2014, which was not when treatment was rendered.
- In responding to Sun Life's request for further information from Dr. Himell about these two identical claims less than a month apart, Dr. Himell wrote that the treatment had in fact occurred on June 2, 2014, and that the May 8, 2014 submissions was intended as a pre-determination but had erroneously been submitted as a claim. This was not true and Dr. Himell knew this not to be true.
- Dr. Himell altered her records for [D.A.] by crossing out the date of May 8, 2014, the date that the treatment was rendered, and correcting it to June 2, 2014, to support her fraudulent submission and deceptive response to Sun Life.

THE MEMBER'S PLEA

The Member admitted the allegations of professional misconduct as set out in the Notice of Hearing, marked as Exhibit 1.

The Panel conducted a plea inquiry and was satisfied that Member's admissions were voluntary, informed and unequivocal. The Member also signed a written plea inquiry (Exhibit 2), which she confirmed she understood.

THE EVIDENCE

On consent of the parties, the College introduced into evidence an Agreed Statement of Facts (Exhibit 3) along with a Document Book (Exhibit 4) which substantiated the allegations. The Agreed Statement of Facts provides as follows:

Background

1. Dr. Himell is a general practitioner and has been a member of the College since 1987.
2. Dr. Himell received a Notice of Hearing, dated September 12, 2019 and reviewed it with her then legal counsel, Mr. Matthew Wilton.
3. The Notice of Hearing particularizes four allegations of professional misconduct against Dr. Himell, which in summary are that she:
 - Falsified a record related to her practice in relation to the service performed on her patient, D.A.
 - Signed or issued a certificate, report or similar document that she knew or ought to have known contained a false, misleading or improper statement
 - Submitted an account or charge for dental services that she knew or ought to have known was false or misleading
 - 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 D.A.

Admissions

4. Dr. Himell admits to the allegations and particulars as set out in the Notice of Hearing.
5. Dr. Himell further admits that these allegations, together with the particulars and facts set out in the Notice of Hearing and

this Agreed Statement of Facts, constitute professional misconduct, as set out in the Professional Misconduct Regulation.

Facts

6. In a letter received by the College on September 29, 2016, Ms. Karen da Silva, an Investigator at Sun Life Assurance Company of Canada (Sun Life), wrote to the College requesting an investigation about billings Dr. Himell had made which she claimed were fraudulent.

7. In summary, the essence of Ms. da Silva's letter was, among other things that¹:
 - A Sun Life investigation uncovered billing issues and treatment notes "that appear to indicate fraud".
 - On May 8, 2014, Sun Life received a submission for four units of scaling, a recall examination and restorations on teeth 13 and 16 for the patient [D.A.]. These services were not reimbursed as the patient's policy limits had been exceeded.
 - On June 2, 2014, Sun Life received a new submission for the same services, with a service date of June 2, 2014. At this time the patient's policy had reset.
 - On June 3, 2014, Sun Life wrote to Dr. Himell requesting additional information.
 - On June 6, 2014, Dr. Himell wrote to Sun Life advising that the initial submission ought to have been submitted as a predetermination.
 - Subsequently, Sun Life requested a copy of [D.A.]'s treatment notes where the date "May 8, 2014 was crossed out and the date June 2, 2014, was written beside the record" along with the words "Wrong date".
 - "Dr. Himell altered a medical legal document to improperly obtain an insurance benefit for services rendered".

8. On October 20, 2016, Ms. Da Silva confirmed by email that she wished this information provided to the College to be filed as a formal complaint against Dr. Himell regarding "the altering/fabrication of false or misleading medical legal

¹ The College did not summarize in this agreed statement of facts, issues raised in the letter of complaint that do not form part of the allegations in the Notice of Hearing or that are in respect of another member.

documents in order to obtain an increased insurance benefit for services rendered”.

9. On October 28, 2016, due to the nature of the complaint, this file was presented to a panel of the Inquiries, Complaints and Reports Committee for consideration of requesting the appointment of an investigator under section 75(1)(c), which the panel authorized. The same day, Ms. Sinead Earley, College Investigator, sent a Memo to Mr. Irwin Fefergrad, then the College’s Registrar, submitting a request from a panel of the Inquiries, Complaints and Reports Committee for the appointment of an investigator for this matter, as:
 - The panel was concerned that Dr. Himell may have altered a patient record and/or committed fraudulent billings.
 - The panel wanted to review:
 - all original and/or computerized patient records, including any and all charts/records, radiographs, financial ledgers, insurance records and/or billings pertaining to [D.A.]
 - Appointment schedules pertaining to [D.A.] for the dates May 8, 2014 and June 2, 2014.
10. Dr. Larisa Naderiani and/or Ms. Sinead Earley were appointed to conduct an investigation in respect of Dr. Himell’s billing practices.
11. On November 2, 2016, Dr. Naderiani and Ms. Earley attended at Dr. Himell’s office and collected [D.A.]’s patient record.
12. The office staff advised the College investigators that Dr. Himmel was on leave from the office due to a family bereavement. Dr. Naderiani reached Dr. Himell on the telephone to explain the process. Dr. Himell said she had done nothing wrong and this was one matter where something was filed wrongly. Dr. Naderiani advised her that she may wish to retain legal counsel. Later, Dr. Naderiani and Dr. Himell spoke again by telephone. Also, Dr. Naderiani wrote and asked Dr. Himell to send the digital radiographs for the patient to the College, which she did.
13. The investigators prepared a Report of the Section 75(1)(c) Investigation dated May 26, 2017.

14. Dr. Himell and the complainant were provided with a copy of the Record of Investigation, and the section 75(1)(c) Report and given an opportunity to respond in writing.
15. The complainant advised that she did not have a response to the report.
16. Dr. Himell requested and was granted an extension/accommodation for further time to respond based on medical need.
17. On August 18, 2017, the College received a response to the Report from Dr. Himell's then counsel, Mr. Matthew Wilton.
18. In summary, in her response submitted through legal counsel, Dr. Himell:
 - Acknowledged that she changed the treatment date in the chart from May 8, 2014 to June 2, 2014 and indicated that this was a mistake.
 - Admitted that [D.A.] did not attend at her office on June 2, 2014, and that it was inappropriate to indicate he was treated on that date.
 - She regrets altering the chart and providing inaccurate information to Sun Life.
 - She acknowledged that her letter to Ms. Da Silva dated June 6, 2014 indicating that the form submitted was supposed to be a pre-determination request was deliberately misleading, as was her statement that the treatment was rendered on June 2, 2014.
 - She was not paid for [D.A.]'s treatment and the charges were eventually written off.
 - She was encouraged by the receptionist at Belmont Dental to resubmit a claim using false information, but she acknowledged that she was entirely responsible for these events.
 - She is struggling with various health and family medical issues and is currently on leave from her dental practice. She is 68 and does not plan to work past the age of 70.
 - She will take the RCDSO course in dental recordkeeping and the course in jurisprudence and ethics and will provide proof of successful completion when done.

19. A copy of the Record of Investigation was sent to both parties with an opportunity to comment. Neither party made any further submissions.
20. When a panel of the Inquiries, Complaints and Reports (“ICR”) Committee met on July 18, 2019 to review the case, it expressed serious concerns regarding the following issues:
 - As acknowledged by Dr. Himell, she engaged in insurance fraud.
 - When Sun Life requested further information from Dr. Himell she wrote a response they considered deceptive, explaining that the treatment had in fact occurred on June 2 2014, and that the May 8, 2014 submission was intended as a pre-determination but had mistakenly been submitted as a claim.
 - Dr. Himell deliberately altered her records for [D.A.] by crossing out the date of May 8, 2014 and correcting it to June 2, 2014, to support her fraudulent submission and misleading letter to Sun Life.
21. Given its concerns related to Dr. Himell’s conduct, the Committee formed an intention to refer specified allegations of professional misconduct to the Discipline Committee.
22. Dr. Himell was advised of the intention of the Committee and as per the College’s protocol; she was invited to make written submissions prior to the panel’s next meeting before the Committee made its final decision.
23. On August 30, 2019 Dr. Himell submitted a written response to the panel through her then counsel, Mr. Matthew Wilton. Dr. Himell proposed that the ICRC not refer her matter to the Discipline Committee, as she is 70 years old and has been dealing with both her health and personal issues. She has practised without incident since 1987. Dr. Himell proposed to retire at the end of December 2019 and said she was prepared to sign a written undertaking with the condition that she not apply again to practise dentistry in Ontario. She repaid Sun Life before this matter became the subject of a complaint.

24. After considering the written submissions, on September 5, 2019, the panel of the ICR Committee decided to confirm its intention and finalized its decision to proceed with a referral of specified allegations of professional misconduct to the Discipline Committee.
25. If Dr. Himell were to testify she would say that at the time she was under the misguided impression that she was helping the son of a friend, which she now understands was improper.
26. This matter was originally scheduled to proceed to hearing on March 27, 2020, but was rescheduled at that time due to the closing of the College's offices due to the pandemic.

Summary

27. Dr. Himell admits the facts as set out in the allegations and particulars of the Notice of Hearing to which she has pleaded guilty, and admits the facts as set out above.
28. Dr. Himell further admits these acts constitute professional misconduct.
29. Dr. Himell has demonstrated her remorse by pleading guilty.

DECISION

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

REASONS FOR DECISION

The Member admitted to the allegations set out in the Notice of Hearing and she accepted the facts presented in the Agreed Statement of Facts.

Based on the evidence contained in the Agreed Statement of Facts, the Panel was satisfied on a balance of probabilities that Dr. Himell committed acts of professional misconduct as alleged. The evidence proved that she falsified a

record related to her practice in relation to the service performed on her patient, D.A., when she changed the date of treatment in her treatment notes; signed or issued a certificate, report or similar document that she knew contained a false misleading or improper statement with respect to the date of the treatment she provided to D.A; and submitted an account or charge for dental services that she knew was false or misleading. Having regard to all the circumstances, the Member's conduct relative to D.A. and Sun Life, as described in the Agreed Statement of Facts, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.

PENALTY SUBMISSIONS

The parties presented the Panel with a Joint Submission on Penalty (Exhibit 5), which provides as follows.

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. Nelly Himell ("the Member") jointly submit that this panel of the Discipline Committee, impose the following penalty on the Member as a result of the panel's finding that the Member is guilty of professional misconduct, namely, that it 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 two (2) months, to be served consecutively, such suspension to commence within thirty (30) 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 immediately inform the following people about the suspension:

- a. staff in the offices or practices in which the Member works, including other regulated professionals and administrative staff
 - b. dentists with whom the Member works, whether the Member is a principal in the practice or otherwise associated with the practice
 - c. dentists or other individuals who routinely refer patients to the Member
 - d. faculty members at Faculties of Dentistry, if the Member is affiliated with the Faculty in an academic or professional capacity
 - e. owners of a practice or office in which the Member works
 - f. patients who ask to book an appointment during the suspension, or whose previously booked appointment has been rescheduled due to the suspension. The Member may assign administrative staff to inform patients about the suspension. All communications with patients must be truthful and honest;
- (ii) while suspended, the Member must not engage in the practice of dentistry, including but not limited to:
- a. acting in any manner that suggests the Member is entitled to practice dentistry. This includes communicating diagnoses or offering clinical advice in social settings. The Member must ensure that administrative or office staff do not suggest to patients in any way that the Member is entitled to engage in the practice of dentistry
 - b. giving orders or standing orders to dental hygienists
 - c. supervising work performed by others
 - d. working in the capacity of a dental assistant or performing laboratory work
 - e. acting as a clinical instructor;
- (iii) while suspended, the Member must not be present in offices or practices where the Member works when

patients are present, except for emergencies that do not involve patients. The Member must immediately advise the Registrar in writing about any such emergencies;

- (iv) while suspended, the Member must not benefit or profit, directly or indirectly from the practice of dentistry.
 - a. The Member may arrange for another dentist to take over their practice during the suspension period. If another dentist assumes the practice, all of the billings of the practice during the suspension period belong to that dentist. The Member may be reimbursed for actual out-of-pocket expenses incurred in respect of the practice during the suspension period.
 - b. The Member is permitted to sign and/or submit insurance claims for work that was completed prior to the suspension.
 - c. The Member must not sign insurance claims for work that has been completed by others during the suspension period;
 - (v) the Member shall cooperate with any office monitoring which the Registrar feels is needed to ensure that the Member has complied with the Suspension Conditions. The Member must provide the College with access to any records associated with the practice that the College may require to verify that the Member has not engaged in the practice of dentistry or profited during the suspension; and
 - (vi) the Suspension Conditions imposed by virtue of subparagraphs 1(c)(i)-(v) above shall be removed at the end of the period that the Member's certificate of registration is suspended.
- (d) directing that the Registrar also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration, namely:

- (i) requiring that the Member successfully complete, at his/her own expense, the ProBE Program on Professional/Problem-Based Ethics, to be completed with an “unconditional pass” 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 the finalization 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 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 course described in subparagraph (1)(d)(i) above have been completed successfully;

- (vi) the 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 have 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 \$3000.00 in respect of this discipline hearing, such costs to be paid in full within six (6) months of this Order becoming final.
2. 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.
 3. Dr. Himell has not previously appeared before the Discipline Committee of the College.

PENALTY DECISION

In light of the Member's signed Undertaking, the Panel agreed and accepted the Joint Submission on Penalty and ordered that:

1. The Member is required 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;
2. The Registrar is directed to suspend the Member's certificate of registration for a period of two (2) months, to be served consecutively, such suspension to commence within thirty (30) days of this Order becoming final;
3. The Registrar is directed 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 paragraph 2 above has been fully served, namely:

- (a) while the Member’s certificate of registration is under suspension, the Member shall immediately inform the following people about the suspension:
 - (i) staff in the offices or practices in which the Member works, including other regulated professionals and administrative staff
 - (ii) dentists with whom the Member works, whether the Member is a principal in the practice or otherwise associated with the practice
 - (iii) dentists or other individuals who routinely refer patients to the Member
 - (iv) faculty members at Faculties of Dentistry, if the Member is affiliated with the Faculty in an academic or professional capacity
 - (v) owners of a practice or office in which the Member works
 - (vi) patients who ask to book an appointment during the suspension, or whose previously booked appointment has been rescheduled due to the suspension. The Member may assign administrative staff to inform patients about the suspension. All communications with patients must be truthful and honest;
- (b) while suspended, the Member must not engage in the practice of dentistry, including but not limited to:
 - (i) acting in any manner that suggests the Member is entitled to practice dentistry. This includes communicating diagnoses or offering clinical advice in social settings. The Member must ensure that administrative or office staff do not suggest to patients in any way that the Member is entitled to engage in the practice of dentistry
 - (ii) giving orders or standing orders to dental hygienists
 - (iii) supervising work performed by others
 - (iv) working in the capacity of a dental assistant or performing laboratory work
 - (v) acting as a clinical instructor;
- (c) while suspended, the Member must not be present in offices or practices where the Member works when patients are present, except for emergencies that do not involve patients. The Member must immediately advise the Registrar in writing about any such emergencies;

- (d) while suspended, the Member must not benefit or profit, directly or indirectly from the practice of dentistry.
 - (i) The Member may arrange for another dentist to take over their practice during the suspension period. If another dentist assumes the practice, all of the billings of the practice during the suspension period belong to that dentist. The Member may be reimbursed for actual out-of-pocket expenses incurred in respect of the practice during the suspension period.
 - (ii) The Member is permitted to sign and/or submit insurance claims for work that was completed prior to the suspension.
 - (iii) The Member must not sign insurance claims for work that has been completed by others during the suspension period;
 - (e) the Member shall cooperate with any office monitoring which the Registrar feels is needed to ensure that the Member has complied with the Suspension Conditions. The Member must provide the College with access to any records associated with the practice that the College may require to verify that the Member has not engaged in the practice of dentistry or profited during the suspension; and
 - (f) the Suspension Conditions imposed by virtue of subparagraphs 3(a)-(e) above shall be removed at the end of the period that the Member's certificate of registration is suspended.
4. The Registrar is directed also impose the following additional terms, conditions and limitations on the Member's Certificate of Registration, namely:
- (a) requiring that the Member successfully complete, at his/her own expense, the ProBE Program on Professional/Problem-Based Ethics, to be completed with an "unconditional pass" within twelve (12) months of this Order becoming final;
 - (b) 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 the finalization 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;

- (c) 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);
 - (d) 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;
 - (e) the Conditions imposed by virtue of subparagraph 4(a) 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 course described in subparagraph 4(a) above have been completed successfully;
 - (f) the Condition imposed by virtue of subparagraph 4(b) 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 4(b) above have 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.
5. The Member shall pay costs to the College in the amount of \$3000.00 in respect of this discipline hearing, such costs to be paid in full within six (6) months of this Order becoming final.

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.

The Panel found that Member's professional misconduct appeared to be an isolated incident and concluded the Joint Submission was within the appropriate range of penalties. The penalty will adequately serve to protect the public. In reaching its decision the Panel was satisfied that the reprimand, suspension and publication of the details of the proceeding on the College's website will achieve both specific and general deterrence. Under the Terms, Conditions and Limitations that will be imposed on the Member's certificate of registration, Dr. Himell must complete the ProBE (Professional/Problem-Based Ethics) course and submit to office monitoring for a period of twenty-four (24) months. These terms will serve to rehabilitate the Member and protect the public.

The Panel considered as aggravating factors that the Member misled investigators initially, altered her records and submitted a false claim form. The Panel accepted as mitigating factors the Member's co-operation with the College, the Member's apparent remorse, and that she has no prior history before the Discipline Committee. The Member's cooperation with the College led to an Agreed Statement of Facts and Joint Submission with respect to Penalty and Costs. She pled guilty and in doing so, prevented a more lengthy and costly hearing.

The Panel is mindful that costs are not part of the penalty order but address a separate goal – namely, cost recovery. The Member has agreed to reimburse some of the costs that the College incurred in the investigation, prosecution and hearing of this matter. The Panel finds the costs order and amount to be appropriate in this case.

THE REPRIMAND

At the conclusion of the discipline hearing, the panel delivered the reprimand to the Member. A copy of the reprimand is attached as Appendix "A" to these Reasons.

I, Dr. Richard Hunter, sign these Reasons for Decision as Chairperson of this Discipline Panel.



Dr. Richard Hunter

December 21, 2020

Date

Appendix "A"

RCDSO v. DR. NELLY JUTKOWICZ HIMELL

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

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

You will be given an opportunity to make a statement at the end of the reprimand if you wish.

The panel has found that you have engaged in multiple acts of professional misconduct. The misconduct related to:

- altering the date on your clinical records for insurance claim purposes;
and
- issuing and submitting an insurance claim form that you knew was false.

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

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

Of special concern to us is the fact that the professional misconduct in which you engaged has involved your attempt to deceive investigators by stating your initial claim to the insurance provider was meant to be for predetermination purposes. The panel would like to stress to the member that the ultimate responsibility for signing records and insurance documents lies with the member and the member alone, not support staff.

Thank you for attending today. We are adjourned.