

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. ROBERT HODGE**, of the City of Maple, 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 October 7, 2021, 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

October 7, 2021

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. ROBERT HODGE** of the City of Maple, 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: Dr. Richard Hunter, Chair
 Dr. Margaret Maggisano
 Mr. Rod Stableforth

BETWEEN:

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO)	Appearances:
)	
)	Brian Gover
)	Independent Counsel for the
)	Discipline Committee of the Royal
)	College of Dental Surgeons of Ontario
- and -)	
)	Emily Lawrence
)	for the Royal College of Dental
)	Surgeons of Ontario
DR. ROBERT HODGE)	Ada Chidichimo Jeffrey
)	for Dr. Robert Hodge

Hearing held by way of videoconference

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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**”) on October 7 and 8, 2021. The hearing was conducted electronically, that is, by videoconference.

Ms. Emily Lawrence appeared as College counsel and was assisted by Dr. Helene Goldberg. Dr. Robert Hodge (the “**Member**” or “**Dr. Hodge**”) was present electronically and was represented at the hearing by Ms. Ada Chidichimo Jeffrey.

At the outset of the hearing, College counsel sought an order banning the publication or broadcasting of patients’ names pursuant to s. 45(3) of the Health Professions Procedural Code.¹ The Member did not oppose College counsel’s motion and the Panel was satisfied that the harm created by disclosure of the patients’ names would outweigh the benefit of adhering to the principle of public disclosure. The Panel therefore made the order banning publication of the patients’ names, and in this document the patients are referred to collectively as “the 13 named patients” and individually as “Named Patient 1”, “Named Patient 2”, etc.

College counsel also addressed another preliminary issue, that is, that although his certificate of registration is suspended, Dr. Hodge remains subject to the College’s disciplinary authority. The Panel accepted that as provided for by s. 14(2) of the Code, although his certificate of registration is suspended, Dr. Hodge continues to be subject to the College’s jurisdiction for professional misconduct “referable to the time when [he] was a member or to the period of the suspension”.²

THE ALLEGATIONS

The Notice of Hearing dated February 3, 2021 (received as **Exhibit 1** at the hearing) contained the following allegations:

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 February and March of 2018, you

¹ Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c 18 (“**Code**”).

² Code, s. 14(2).

contravened a provision of the Act, the *Regulated Health Professions Act*, 1991 or the regulations under either of those Acts in relation to services provided to [13 named patients];³ and

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 February and March of 2018, you engaged in conduct or performed an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical in relation to [the 13 named patients], contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.⁴

THE MEMBER'S PLEA

The Member admitted both of the allegations of professional misconduct set out in the Notice of Hearing (**Exhibit 1**). The Panel's Chair conducted a plea inquiry to ensure that the Member's admissions of professional misconduct were voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

³ This allegation was particularized to indicate that the Member provided dental treatment to each of the 13 named patients on specified dates and that in doing so, he did not disclose to the patients that his certificate of registration with the College was suspended, leading them to believe that he was entitled to practice dentistry when he was not.

⁴ This allegation was particularized to indicate that: (1) effective February 1, 2018, the Member's certificate of registration with the College was suspended due to non-payment of fees, and to date, it has not been reinstated; (2) on 7 specified dates in February and March, 2018, the Member provided dental treatment to the 13 named patients at a time when he did not hold a current certificate of registration with the College; (3) at the time of treating the 13 named patients, he did not disclose to them that his certificate of registration with the College was suspended, leading them to believe that he was entitled to practice dentistry when he was not; (4) at the time of treating the 13 named patients, he did not disclose to the practice owners, in particular, Dr. Dalia Henein, Dr. Peng Xu and Dr. Zhang Zu, that his certificate of registration with the College was not current; (5) at some point between March and April of 2018, the Member stopped responding to attempts to contact him made by the practice owners, in particular, Dr. Dalia Henein, Dr. Peng Xu and Dr. Zhang Zu. The attempts to reach him were being made to address his unexplained absences from work and to manage the patients who were undergoing treatment with him. In not responding, the Member left the task of managing the ongoing dental needs of his patients to these practice owners; (6) the Member failed to make or to aid in making any arrangements for the ongoing dental treatment for his patients when he was no longer able to provide such care; and (7) the Member's conduct in deliberately and knowingly continuing to practice dentistry while his certificate of registration with the College was suspended was a blatant show of disregard for his regulatory body and indicates that he is ungovernable. Such conduct would reasonably be regarded by members as disgraceful, dishonourable, unprofessional and/or unethical.

The evidence at the liability stage of the hearing consisted of an Agreed Statement of Facts, which became **Exhibit 3** on the hearing. The Agreed Statement of Facts provided as follows:

Background

1. Dr. Hodge received his general dental education at the University of Western Ontario, in 1973. Dr. Hodge practiced General Dentistry while serving with the Canadian Armed Forces, received an honourable discharge, and applied for postgraduate specialty training.
2. Dr. Hodge completed his orthodontic specialty training from the University of Alberta in 1980, and continued with his Master of Science studies.
3. Dr. Hodge was registered with the Alberta Dental Association as a Specialist Orthodontist from 23 June 1981; with the Royal College of Dental Surgeons of Ontario as a general dentist from May 18, 1973 and as an Orthodontist from June 5, 1981.
4. Dr. Hodge did not pay the 2018 annual membership fee by the deadline of December 15, 2017.
5. On February 1, 2018, Dr. Hodge's certificate of registration with the College was suspended due to non-payment of fees. On February 1, 2020, his registration was administratively revoked for his continued non-payment of fees.
6. Dr. Hodge worked at three dental offices in 2018:
 - A. the dental office of Dr. Dalia Henein, located at 6970 Lisgar Drive, Mississauga, Ontario;
 - B. Laurelwood Dental, owned and operated by Dr. Peng Xu; and
 - C. Dentistry on Dundas, formerly owned and operated by Dr. Zu Zhang.

Dr. Hodge Saw and Treated Patients While Suspended

7. Dr. Hodge saw and treated patients on 19 occasions while he was suspended. In particular:

A. On February 1, 2018, at Dr. Henein's office, Dr. Hodge saw:

- i. [Patient 1] for an orthodontics appointment; and
- ii. [Patient 2] for an orthodontics checkup;

B. On February 6, 2018, at Dr. Xu's office, Dr. Hodge saw:

- i. [Patient 3] for an orthodontics appointment;

C. On February 8, 2018, at Dr. Henein's office, Dr. Hodge saw:

- i. [Patient 4] for an orthodontics checkup;

D. On February 13, 2018, at Dr. Xu's office, Dr. Hodge saw:

- i. [Patient 5] for an orthodontics appointment;
- ii. [Patient 6] for an orthodontics appointment;
- iii. [Patient 7] for an orthodontics appointment; and

E. On February 20, 2018, at Dr. Zhang's office, Dr. Hodge saw:

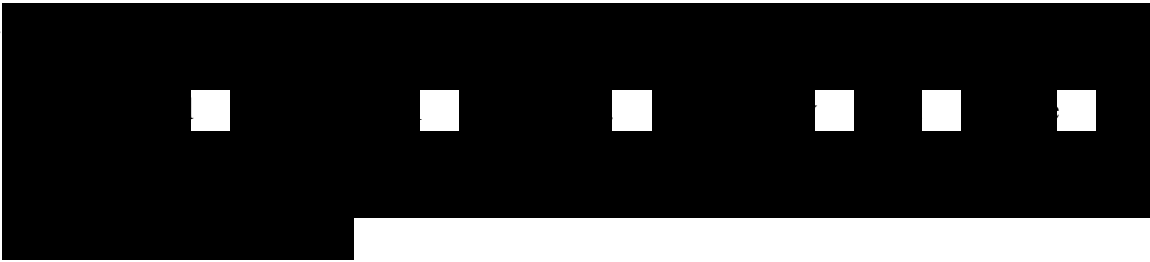
- i. [Patient 8] for an orthodontics appointment;
- ii. [Patient 9] for an orthodontics appointment; and
- iii. [Patient 10] for an orthodontics appointment.

F. On March 13, 2018, at Dr. Xu's office, Dr. Hodge saw:

- i. [Patient 11] for an orthodontics appointment;
- ii. [Patient 12] for an orthodontics appointment;
- iii. [Patient 7] for an orthodontics appointment;
- iv. [Patient 6] for an orthodontics appointment; and
- v. [Patient 5] for an orthodontics cleaning.

G. On March 15, 2018, at Dr. Henein's office, Dr. Hodge saw:

- i. [Patient 4] for an orthodontics appointment;
- ii. [Patient 2] for an orthodontics checkup;
- iii. [Patient 13] for an orthodontics appointment; and

- iv. [Patient 1] for an orthodontics appointment in which Dr. Hodge adjusted her braces and added elastics.
8. If he were to testify, Dr. Hodge would state that he did not provide any dental treatment or attend at any dental office subsequent to March 15, 2018, and has been cooperative, abiding by the terms of his administrative suspension and revocation since that time.
9. Dr. Hodge admits and acknowledges that he was engaged in the practice of dentistry when he saw and treated the patients set out in paragraph 7.
10. Dr. Hodge admits and acknowledges that he did not advise the patients listed above about his suspension. He also did not disclose to any of the clinic owners, Dr. Henein, Dr. Xu or Dr. Zhang that his certificate of registration was suspended as of February 1, 2018.
11. Dr. Hodge admits and acknowledges that he did not manage the ongoing needs of the patients listed on paragraph 7, in that he did not respond to the clinic owners' attempts to contact Dr. Hodge and did not ensure that the treatment of his patients was transferred to appropriate dental professionals.
12. Dr. Hodge admits and acknowledges that he was required to inform himself of the status of his certificate of registration at all times. Dr. Hodge further admits that he deliberately and knowingly continued to practice dentistry after communication with the College on March 2, 2018 and March 9, 2018.
13. If Dr. Hodge were to testify he would say that, to his knowledge, his dental treatment of patients did not result in any harm to the patients seen.
14. 
15. He would further state that, in late 2017, the decision was taken to forego the long term care option and Dr. Hodge purchased and renovated a new home in order to accommodate his wife's wheelchair needs, and provide

space for her live in caregiver. During this time, Dr. Hodge owned and maintained two residences; "staging" and marketing the marital home, while renovating the new house. As well, Dr. Hodge participated in the nursing and care of his wife after practice hours and on weekends.

16. Dr. Hodge acknowledges that he did not update the College with his current mailing address nor take steps to ensure that he received and reviewed correspondence from the College that was sent to the mailing address on file with the College. Dr. Hodge admits and acknowledges that he was remiss and as a member of the College, it is his responsibility to ensure that the College has updated contact information for him.
17. Dr. Hodge now understands and appreciates that the College sent correspondence to him, which, if he were to testify, he would state he did not receive because he had not updated his mailing address with the College. The returned correspondence from the College included:
 - A. a letter dated December 22, 2017. The letter advised him that he had not paid his 2018 fees by the deadline of December 15, 2017 and that to maintain his certificate of registration, his fees had to be received by the College on or before January 30, 2018, failing which he would be suspended on February 1, 2018; and
 - B. a letter dated February 1, 2018 that confirmed that he had not paid his 2018 fees and that his certificate of registration was suspended.
18. Dr. Hodge admits and acknowledges that he was in contact with the College on or about March 2, 2018, and March 9, 2018 regarding a "renewal" of his license. Dr. Hodge admits that the College advised him in writing on March 2 (orally and by email) that he was administratively suspended for non-payment of fees and was not entitled to practice or be in a dental office.
19. Dr. Hodge submitted an application for re-instatement on March 6, 2018.
20. On March 9, 2018 the College sent a letter to Dr. Hodge advising him that he was ineligible for reinstatement because, at the time he applied for re-instatement, he was the subject of one or more complaint(s) at the ICRC level.
21. Dr. Hodge was advised that he was entitled to apply for a new certificate of registration however he was advised that he may wish to consider holding

off on submitting an application for a new certificate of registration until after the complaint matters had been concluded.

Admissions

22. Dr. Hodge admits that the above conduct constitutes professional misconduct and that by reason of engaging in the conduct outlined above, he is guilty of professional misconduct as set out in 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 he contravened:

- A. paragraph 48 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended by contravening a provision of the *Dentistry Act*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, when he provided treatment to the above-noted patients after February 1, 2018 and did not disclose to them that his certificate was suspended, as alleged in Allegation 1 of the Notice of Hearing;
- B. paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended by engaging in conduct or performing an act that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical, as alleged in Allegation 2 of the Notice of Hearing in that he:
 - i. provided dental treatment to patients on the date set out above as set out in paragraph 7 when he did not hold a valid certificate of registration;
 - ii. did not disclose to his patients or clinic owners that he was not entitled to practice;
 - iii. did not adequately communicate with dental owners, or manage his patients' treatment, or make appropriate arrangements for the ongoing treatment of his patients; and
 - iv. deliberately and knowingly continued to practice dentistry after his certificate of registration was suspended.

General

23. Dr. Hodge has had the opportunity to take independent legal advice with respect to his admissions.

DECISION – FINDINGS OF PROFESSIONAL MISCONDUCT

Having considered the Member's plea, the Agreed Statement of Facts (**Exhibit 3**), the submissions of the parties' counsel and the advice of our independent counsel, the Panel found that the Member committed professional misconduct as set out in the two allegations contained in the Notice of Hearing (**Exhibit 1**).

REASONS FOR DECISION – FINDINGS OF PROFESSIONAL MISCONDUCT

The Panel concluded that the Member's admissions on the record that he engaged in the forms of professional misconduct set out in the two allegations contained in the Notice of Hearing (**Exhibit 1**), coupled with the express and general admissions contained in the Agreed Statement of Facts (**Exhibit 3**) provided a basis for finding that the Member engaged in the forms of professional misconduct set out in the allegations.

The Chair then afforded the parties' counsel the opportunity to adduce evidence and make submissions relevant to the penalty and costs order that the Panel should make in light of the findings of professional misconduct.

EVIDENCE ON PENALTY PHASE

The evidence adduced on the penalty phase of the hearing consisted of the Affidavit of Dr. Hodge, sworn September 30, 2021 (**Exhibit 5**), Dr. Hodge's testimony and documents put to Dr. Hodge in cross-examination, some of which are referenced below.

Dr. Hodge explained that he first registered with the College in 1973 and that he became an orthodontist in 1981. His license has been revoked since 2018. The years 2017 to 2019 have been very difficult for him. He neglected his responsibilities and failed to engage in prompt, fulsome communications with the College. He did not prioritize responding to his professional regulator.

Dr. Hodge offered his contrition for his actions and asserted that through individualized tutoring and casework, he can now meet his professional obligations. It was his evidence that he has developed self-awareness and coping strategies to help him avoid future transgressions.

In his testimony, Dr. Hodge asserted that the situation now is very different from as it was in 2018. In addition to the self-awareness and coping strategies he has gained, other circumstances have improved. His wife, [REDACTED] is now in a stable condition. The house where they had lived previously has been sold. Their new house is now almost fully renovated. The Member testified, “I will be free of the problems that troubled me.”

Much of Dr. Hodge’s testimony related to his wife’s condition and steps he has taken to ameliorate it. This topic was also extensively canvassed at paragraphs 12 through 40 of his affidavit (**Exhibit 5**), where the Member referred to “extenuating circumstances to be considered by the Panel in determining the appropriate penalty for [his] conduct”. It is apparent that Dr. Hodge’s personal circumstances were and are very difficult.

Dr. Hodge testified that he did not receive correspondence sent to his former address. The subdivision was serviced by a “super mailbox” and when the mailbox for Dr. Hodge’s home was full, the Canada Post employee would mark newly arriving mail “Return to Sender”. The Member also testified that he was not receiving email. He tried to move his internet service to the new house but was told it could not be carried over there. Dr. Hodge accepted, however, that it was his responsibility to receive correspondence from the College and that he failed to meet that responsibility. When a Panel member asked him how he could fail to pay fees to his professional regulator after having been through the annual renewal cycle so many times, Dr. Hodge testified that he had a “huge blind spot” and thought he could empty the mailbox on his time.

When asked about how he could account for practising while suspended, Dr. Hodge testified that he was unaware of what his responsibilities were. It was his evidence that he thought he could meet obligations to patients, despite being suspended.

Dr. Hodge also gave evidence about remediation efforts he has undertaken. These included a course in ethics instruction with Erika Abner LLB, LLM, PhD, an educational consultant, and the ProBE (Professional, Problem-Based Ethics) ethics and boundaries program. Dr. Abner's report became **Exhibit 9**. In cross-examination, Dr. Hodge conceded that Dr. Abner's report does not address Dr. Hodge's failure to provide for transfer of patients or the fact that in March, 2018, the College informed him on two occasions that he could not practise while his certificate of registration was suspended.

A document certifying that the Member completed the ProBE course between March 4 and 6, 2021 was filed as **Exhibit 10**.⁵

In cross-examining Dr. Hodge, College counsel put to him correspondence from the College. These included a letter dated December 22, 2017, advising Dr. Hodge that the College had not received payment in relation to his 2018 annual fees by December 15, and that if payment was not made by January 31, 2018, his certificate of registration would be suspended effective February 1, 2018 (**Exhibit 11**).⁶ Dr. Hodge denied seeing this letter. Similarly, the Member denied recognizing a notice from the College's Registrar sent to him on February 1, 2018, advising him that his certificate of registration was suspended (**Exhibit 12**).⁷

A portion of his cross-examination focussed on paragraphs 15 to 17 of Exhibit 3, the Agreed Statement of Facts (Exhibit 3).⁸ There it was indicated that if he were called to testify, Dr. Hodge would state that in late 2017, he "owned and

⁵ Dr. Hodge testified that he completed the ProBE course from September 9-11, 2021, not from March 4-6, 2021 as is indicated on the certificate.

⁶ An envelope bearing this letter with a "return to sender" label attached to it was filed as **Exhibit 14**.

⁷ An envelope bearing this notice with a "return to sender" label attached to it was filed as **Exhibit 15**.

⁸ For ease of reference, those paragraphs are set out below:

15. He would further state that, in late 2017, the decision was taken to forego the long term care option and Dr. Hodge purchased and renovated a new home in order to accommodate his wife's wheelchair needs, and provide space for her live in caregiver. During this time, Dr. Hodge owned and maintained two residences; "staging" and marketing the marital home, while renovating the new house. As well, Dr. Hodge participated in the nursing and care of his wife after practice hours and on weekends.
16. Dr. Hodge acknowledges that he did not update the College with his current mailing address nor take steps to ensure that he received and reviewed correspondence from the College that was sent to the mailing address on file with the College. Dr. Hodge admits and acknowledges that he was remiss and as a member of the College, it is his responsibility to ensure that the College has updated contact information for him.
17. Dr. Hodge now understands and appreciates that the College sent correspondence to him, which, if he were to testify, he would state he did not receive because he had not updated his mailing address with the College. The returned correspondence from the College included:
 - A. a letter dated December 22, 2017. The letter advised him that he had not paid his 2018 fees by the deadline of December 15, 2017 and that to maintain his certificate of registration, his fees had to be received by the College on or before January 30, 2018, failing which he would be suspended on February 1, 2018; and
 - B. a letter dated February 1, 2018 that confirmed that he had not paid his 2018 fees and that his certificate of registration was suspended.

maintained two residences” (paragraph 15); he acknowledges that “he did not update the College with his current mailing address” (paragraph 16); and that “[Dr. Hodge] would state he did not receive [correspondence from the College] because he had not updated his mailing address with the College” (paragraph 17). Two items of correspondence were specifically referenced in paragraph 17: Exhibit 11 and Exhibit 12.

It was established to the Panel’s satisfaction that these statements were inaccurate. In fact, Dr. Hodge did not have an address that was in need of updating in December 2017. He did not own two houses during the period when he received notices regarding the suspension of his certificate of registration. In February and March, 2018, when he saw patients while his license was suspended, Dr. Hodge was still living at the address that the College had on its file. It is untrue that Dr. Hodge did not receive mail during that time because of a failure to update his address with the College.

PARTIES’ SUBMISSIONS AND INDEPENDENT COUNSEL’S ADVICE ON PENALTY AND COSTS

Both College counsel and the Member’s counsel provided written submissions on penalty and costs.

The College’s written submissions on penalty were filed as **Exhibit 4**. It was the College’s primary submission that Dr. Hodge has not shown that he is willing to be governed as a member of the College, nor has he shown that he can remediate what was characterized as his “pattern of unprofessionalism”. The College therefore submitted that the penalty order should include an oral reprimand and revocation of the Member’s certificate of registration, and that pursuant to the Code, the results of these proceedings must be recorded on the College’s register indefinitely and any publication of the Panel’s decision and reasons should include the Member’s name and address.

In making this submission, the College adverted to cases in which the concept of governability was discussed⁹ and pointed out that although important in sentencing criminal offenders, the principle of “the least restrictive sanction” does not apply in professional discipline cases.¹⁰

⁹ *RCDSO v Hashem*, H130016 (Decision and Reasons – Penalty, pp. 7-8); *Ontario (College of Physicians and Surgeons of Ontario) v. Botros*, 2018 ONCPSD 51.

¹⁰ *CPSO v. McIntyre*, 2017 ONSC 116 (Ont. Div. Ct.).

The College also pointed to the aggravating factors present in this case: the Member saw and treated thirteen patients on nineteen occasions over the course of six weeks while his certificate was suspended; his lengthy regulatory history; and his failure to take advantage of opportunities to change his ways after interventions by the Complaints Committee (as it was formerly known) and the Inquiries, Complaints and Reports Committee.

College counsel referred in particular to Inquiries, Complaints and Reports Committee decisions dated December 6, 2012; February 4, 2016; April 6, 2017; June 21, 2018; September 5, 2018; December 4, 2018; and July 10, 2019. In each instance, Dr. Hodge demonstrated a lack of professionalism, disrespect for the College's processes or an uncooperative attitude toward the College. College counsel submitted that Dr. Hodge has a lack of respect for the College's regulatory authority, as shown by (among other things) his unprofessional demeanor in communicating the College in 2012, 2016 and 2017. Furthermore, Dr. Hodge's carelessness in relation to paragraphs 15, 16 and 17 of the Agreed Statement of Facts is further evidence of his lack of care in his dealings with the College. All of this calls into question whether he is governable.

Alternatively, College counsel submitted, if the Panel were not inclined to revoke the Member's certificate of registration, an appropriate penalty would include the following elements: an oral reprimand within 90 days of the Panel's order becoming final or on a date fixed by the Registrar; a 12-month suspension to take effect once the Member obtains an active certificate of registration; specified terms, conditions and limitations on the Member's certificate of registration to continue until the suspension of the Member's certificate of registration has been fully served; additional terms, conditions and limitations on the Member's certificate of registration, including requiring the Member to complete the ProBE Program for Professional/Problem-Based Ethics and obtain an "unconditional pass" grade; and the results of these proceedings must be recorded on the College's register indefinitely and any publication of the Decision of the panel would therefore occur with the name and address of the Member included.

College counsel also sought an order under s. 53.1 of the Code requiring the Member to pay a total of \$10,000 in costs; \$2,500 in relation to the adjournment of this matter in March 2021 and \$7,500 for the hearing. College counsel submitted that \$7,500 is "a small fraction" of the costs borne by the College in investigating, prosecuting and conducting the hearing in relation to this matter.

The Member's written submissions invited the Panel to impose an oral reprimand and suspend the Member's certificate of registration for two months. In support of this submission, the Member's counsel pointed to Dr. Hodge's acceptance of responsibility and cooperation in the course of these proceedings, his lack of discipline history (although he does have a lengthy regulatory history), what were termed "the significant mitigating factors of his wife's illness", and the fact that he has completed the course with Dr. Abner and the ProBE course.

Dr. Hodge's counsel reviewed a number of cases in support of her submission that revocation should only be ordered in the most serious of cases and is not warranted on the facts of this case.

Counsel for Dr. Hodge submitted that while a \$2,500 costs award has been agreed upon in connection with the adjournment of this matter in March, 2021, any costs order made against Dr. Hodge in relation to the hearing (i.e., any amount in excess of \$2,500) should be nominal.

At the conclusion of the parties' counsels' submissions, the Panel sought advice from its independent counsel. Mr. Gover prefaced that advice by reminding the Panel that its task is to determine the appropriate order to make in this case, which requires the Panel to consider the circumstances of the professional misconduct and the member who engaged in it. This case is very different from one in which the parties have entered into a joint submission on penalty. In a case where the parties have entered into a joint submission on penalty, a panel's decision-making is significantly constrained; in that case, a joint submission should be accepted unless the result would be to bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

It is because of this difference, Mr. Gover advised us, that cases involving joint submissions on penalty (a number of which were relied on by the Member's counsel) are generally given less precedential value than those in which the issue of the appropriate penalty is fully argued, and the tribunal has greater discretion as to which penalty to impose.

Mr. Gover referred us to the general principles governing the imposition of penalty in professional misconduct cases. They include general deterrence, specific deterrence, remediation (where appropriate) and protection of the public. Independent counsel canvassed the aggravating and mitigating factors and asked the Panel to consider what, if anything, Dr. Hodge's responses to expressions of concern by the Complaints Committee and the Inquiries, Reports and Complaints

Committee tell the Panel about whether Dr. Hodge is governable. It was his advice that the facts of this case ground a concern about governability in that Dr. Hodge practised while his certificate of registration was under suspension. A key consideration is whether Dr. Hodge has changed his ways. Mr. Gover also referred to cases cited by the parties' counsel on the subjects of governability and amenability to remediation.

On the subject of costs, independent counsel advised the Panel that it has a broad discretion but should be guided by the following factors: the nature of the findings of professional misconduct; the relative success of the parties; the nature and the conduct of the Member's defence; the length of the hearing and the reasons for it; and the number of lawyers used by the College, their hourly rates, and hours spent.

The parties' counsel substantially agreed with independent counsel's advice.

In the course of its deliberations, the Panel posed the following question to its independent counsel:

In the event that the Panel were to accept the College's alternative submission and direct the Registrar to suspend Dr. Hodge's certificate of registration for a period of 12 months, instead of requiring Dr. Hodge to take the ProBE Program for Professional/Problem-Based Ethics, can the Panel require Dr. Hodge to:

1. re-take and successfully complete the course offered by Dr. Abner;
2. provide Dr. Abner with each of the following:
 - a. the Complaints Committee and Inquiries, Complaints and Reports Committee decisions,
 - b. the Agreed Statement of Facts (Exhibit #3), and
 - c. the Panel's decision and reasons in this matter;
3. submit Dr. Abner's report following completion of the course as re-taken to the Registrar and the Chair of the Discipline Committee; and
4. complete at his own expense the specified continuing education or remediation programs ("SCERPs") directed in the Inquiries, Complaints and Reports Committee decisions in relation to file numbers 1702600 and C170723V.

By way of letter dated October 8, 2021 addressed to the parties' counsel and forwarded to the Panel, Mr. Gover provided written advice in response to this question. It was his advice that jurisdiction exists to require Dr. Hodge to do the things to which the Panel referred, and that this could be achieved by revising paragraph 4 of the document entitled "Submission of the Royal College of Dental Surgeons of Ontario in respect of Terms of a Penalty Order for Any Order with a Suspension". Independent counsel's letter outlined how paragraph 4 could be revised to achieve this result.

The parties' counsel provided submissions concerning independent counsel's advice. College counsel agreed with independent counsel's advice that jurisdiction exists to impose the requirements as outlined, subject to the following:

- The College should provide copies of the ICRC decisions directly to Dr. Abner, or that the Member should be required to provide to the College proof of delivery of them to Dr. Abner.
- The College recognizes that the Member completed the ProBE course with an unconditional pass, having received confirmation the day before the hearing began. Nonetheless, for the purposes of specific and general remediation, the College submitted that an order requiring the Member to complete the ProBE course is appropriate. The College confirmed that it does not intend to require the Member to re-take the ProBE course.
- The College did not object to the inclusion of proposed subparagraph requiring the Member to complete the SCERPs ordered by the Inquiries, Complaints and Reports Committee as a means of conveying the importance that the Member satisfy these orders. In the alternative and in any event, the College submitted that the Panel could meet this objective by referencing the existence and continued enforceability of the SCERPs in its decision and reasons.

The Member's counsel essentially accepted independent counsel's advice. However, she noted that the terms of the SCERP ordered by the Inquiries, Complaints and Reports Committee on July 10, 2019 in connection with C170723V require Dr. Hodge to complete the SCERP within six months of his return to the practise of dentistry. Also, while independent counsel's draft would have required Dr. Hodge to provide Dr. Abner with Complaints Committee decisions from 1998, 2000 and 2003 and Inquiries, Complaints and Reports

Committee decisions from 2009, 2012 and 2016, the Member's counsel submitted that those decisions are dated and that Dr. Abner ought to be provided with the Inquiries, Complaints and Reports Committee decisions from 2017 and onwards. Dr. Hodge's counsel also suggested that Dr. Abner should be provided with a copy of the Code, as well as brief explanation.

In addition to responding to independent counsel's advice, the Member's counsel submitted that some portion of the suspension should be remitted upon completion of Dr. Abner's course, and evidence of enrolment in a one-on-one graduate level SCERP in orthodontics. It was her submission that four months of the suspension should be remitted.

College counsel objected to the Member's counsel's additional submissions about remitting a portion of the suspension, taking the position that these additional submissions were not responsive to the question posed to independent counsel and the advice given. The Panel agreed with College counsel in this respect and did not consider the Member's counsel's additional submissions as to the length of the suspension of Dr. Hodge's certificate of registration.

PENALTY AND COSTS DECISION

Having considered the findings of professional misconduct, the evidence and the submissions made on behalf of the College and the Dr. Hodge, the Panel made an order with the following components:

1. 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;
2. directing the Registrar to suspend the Member's certificate of registration for a period of twelve (12) months to take effective on a date when the Member obtains an active certificate of registration. Once commenced, the suspension shall run without interruption;
3. directing that the Registrar shall impose the following terms, conditions and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the 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. Directing that the Registrar also impose the following additional terms, conditions and limitations on the Member's certificate of registration (the "Practice Conditions"), namely:

- a. the Member shall re-take and successfully complete, at his own expense, the following course approved by the Registrar:
 - i. the Ethics Instruction course offered by Erika Abner LLB, LLM, PhD (the “Ethics Instruction Course”);

which will be completed within six (6) months of the Member obtaining an active certificate of registration or such further time as may be permitted by the Registrar;

- b. the Member shall provide each of the following items to Dr. Abner prior to re-taking the Ethics Instruction Course:
 - i. the decision and reasons of the Complaints Committee in relation to file number 96-058F, dated October 13, 1998;
 - ii. the decision and reasons of the Complaints Committee in relation to file number 96-ISIF, dated November 17, 2000;
 - iii. the decision and reasons of the Complaints Committee in relation to file number C020118W, dated June 5, 2003;
 - iv. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C090076W, dated November 20, 2009;
 - v. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C100030M, dated December 6, 2012;
 - vi. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C140467Z, dated February 4, 2016;
 - vii. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C150454R, dated April 6, 2017;
 - viii. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C1702600, dated June 21, 2018;
 - ix. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C170160W, dated September 5, 2018;
 - x. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C1702710, dated December 5, 2018;

- xi. the decision and reasons of the Inquiries, Complaints and Reports Committee in relation to file number C170723V, dated July 10, 2019;
 - xii. the Agreed Statement of Facts filed as Exhibit #3 at the hearing in relation to Discipline Committee file number H190009; and
 - xiii. the Decision and Reasons of the panel of the Discipline Committee in relation to Discipline Committee file number H190009;
- c. within one (1) week of successfully completing the Ethics Instruction Course, the Member shall submit to the Registrar a report completed by Dr. Abner detailing the information made available to her, the components of the Ethics Instruction Course and the bases for her assessment that the Member has successfully completed it;
- d. the Member shall complete at his own expense the specified continuing education or remediation programs (“SCERPs”) directed in the Inquiries, Complaints and Reports Committee decisions in relation to file numbers 1702600 and C170723V;
- e. the Member must respond to all College inquiries and requests for information by the due date specified by the College, and if the College does not specify the due date, his response is due within 30 days of date that the inquiries or requests for information were sent by the College; and
- f. the Member must inform the College of each and every location at which he practises, in any jurisdiction, within five (5) days of starting his practice at such location(s).
5. Pursuant to the Health Professions Procedural Code, the results of the proceeding must be recorded on the Register of the College indefinitely and any publication of the Decision of the panel would therefore occur with the name and address of the Member included.

In addition, the Panel made the following order as to costs: The Member shall pay costs to the College in the amount of \$10,000.00 to be paid in full within three (3) months of this Order becoming final. \$2500.00 was agreed upon by the parties

for the March 2021 adjournment and \$7500.00 for the investigation and conducting of this hearing.

REASONS FOR PENALTY AND COSTS DECISION

After deliberation, the Panel concluded that public protection is afforded by a penalty order that includes a reprimand, a twelve (12) month suspension and imposition of the above-mentioned terms, limitations and conditions on the Member's certificate of registration.

The lengthy suspension, reprimand and the recording of this matter on the College's register will act as both specific and general deterrents. This penalty order sends a clear message to members of the profession that it is their responsibility to abide by the rules and regulations of their professional regulator.

The College will not tolerate treatment of patients without a valid certificate of registration. Dr. Hodge continued to practise after he was advised by the College that his license was suspended. This was very disconcerting to the Panel. The Member explained that he did not receive mail from the College because he was in extreme distress due to his wife's debilitated medical condition and he was not checking his mailbox on a regular basis. The Panel was empathetic towards his wife's condition but was of the view that it did not relieve him of his professional responsibility to ensure that his certificate of registration was in good standing. This demonstrates a lack of insight and accountability by the Member.

Members must respond in a timely and professional manner to College correspondence. Members must also respond to their colleagues in a timely manner when it pertains to patient care. It is inexcusable that Dr. Hodge abandoned his patients while under active treatment. The Member failed to advise clinic owners of his suspended certificate of registration and he failed to respond to their queries about continuing treatment for their patients.

Remediation of the Member is met by the successful completion of an ethics-based course led by Dr. Abner. Although Dr. Hodge did attend this course previously, Dr. Abner was not made aware of the details of Dr. Hodge's lengthy history with the Complaints Committee and the Inquiries, Complaints and Reports Committee, and the details concerning this discipline hearing. The Panel accepted his attendance and successful completion of the ProBe (ethics) course.

The Panel considered the following aggravating factors:

- The Member saw and treated thirteen patients on nineteen occasions over the course of six weeks while his certificate was suspended;
- The Member's lengthy regulatory history, coupled with his failure to take advantage of opportunities to change his ways after interventions by the Complaints Committee (as it was formerly known) and the Inquiries, Complaints and Reports Committee;
- The Member abandoned patients under active treatment and failed to respond to clinic owners who sought direction for their patients.

The Panel also took into account the following mitigating factors:

- No patient harm was caused by Dr. Hodge's misconduct;
- Dr. Hodge has not had any previous discipline history;
- The Member cooperated with the investigation and admitted his misconduct by submitting an agreed statement of facts;
- The Member voluntarily took two ethics-based courses in an attempt to remediate himself; and
- The Panel accepted that Dr. Hodge's wife's medical condition was a distraction in that it challenged his ability to meet his professional obligations.

The Panel considered its independent legal counsel's advice on costs and concluded the remaining \$7500.00 was reasonable and represents a fraction of the College costs to investigate, prosecute and conduct this matter.

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



Dr. Richard Hunter

November 12, 2021

Date

RCDSO v. Dr. Robert Hodge

Reprimand – January 13, 2022

The Panel Chair noted at the outset that despite the Panel's November 12, 2021 order that required him to appear before the Panel of the Discipline to be reprimanded, Dr. Hodge did not attend today to receive his reprimand orally. Administering reprimands in that manner is the practice in relation to paragraph 51(2)4 of the Health Professions Procedural Code (Schedule 2 to the *Regulated Health Professions Act, 1991*). The Hearings Assistant confirmed that Dr. Hodge had been properly notified that the reprimand would be administered today and that Dr. Hodge was notified of that fact by numerous means (including a hand-delivered letter and email) but he did not respond. Before proceeding, the Panel waited 15 minutes after convening the hearing, until 9:15 a.m. The Reprimand was then administered *in absentia*. The Panel Chair directed that a written copy of the reprimand be sent to Dr. Hodge and that the reprimand be appropriately memorialized and form part of the College's file in relation to Dr. Hodge.

Dr. Hodge, 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.

Had you attended, you would have been given an opportunity to make a statement at the end of the reprimand, if you wished.

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

- a. Your conscious decision not to respond to College communications related to the suspension of your certificate of registration,
- b. Your continued treatment of patients while your certificate of registration was suspended,

- c. Your failure to advise your patients and the clinic owners that your certificate of registration was suspended, and
- d. Your failure to ensure that your patients would be transferred to an appropriate dental professional for continuing treatment.

I have characterized your decision not to respond to College communications related to the suspension of your certificate of registration as a conscious one in light of the Discipline panel's findings (at page 13 of its Decision and Reasons) that

- You did not have an address that was in need of updating in December 2017.
- You did not own two houses during the period when you received notices regarding the suspension of your certificate of registration.
- In February and March, 2018, when you saw patients while your license was suspended, you were still living at the address that the College had on its file.
- It is untrue that you did not receive mail during that time because of a failure to update your address with the College.

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 a blatant disregard for the College's communications and directives. You demonstrated a lack of professionalism, disrespect for the College's processes and exhibited an uncooperative attitude toward the College. Your lengthy regulatory history suggests you are reluctant to change your unprofessional demeanor, particularly as it relates to your communications with the College. As this Discipline panel commented in its Decision and Reasons (at page 14), all of this calls into question whether you are governable.

Beyond that, abandoning your patients during active treatment shows a total disregard for their wellbeing and is unacceptable. Your failure to respond to your colleagues and employers in a timely manner further demonstrates an unprofessional and arrogant attitude.

Although it was and is empathetic towards your wife's medical condition, the Discipline panel wishes to impress upon you that as serious as that condition is, and as commendable the steps you've taken to assist your wife are, they constitute no excuse for your failure to meet your professional responsibilities to your patients, your colleagues, your employers and your regulator.

As I advised earlier, had you attended, Dr. Hodege, you would have been given an opportunity to make a comment if you wished to do so. It would **not** have been an opportunity for you to debate the merits or the correctness of the decisions we have made.

I would like to thank those who attended today. We are adjourned.