

**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. DAVID MILLER** of the City of Oshawa, 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. Peter Delean  
  Dr. Paul Jackson  
  Mr. Brian Smith  
  Mr. Marc Trudell

**BETWEEN:**

<b>ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO</b>	)	Appearances:
	)	
	)	Andrea Gonsalves
	)	Independent Counsel for the
	)	Discipline Committee of the Royal
	)	College of Dental Surgeons of Ontario
- and -	)	
	)	Megan Shortreed
	)	for the Royal College of Dental
	)	Surgeons of Ontario
	)	
<b>DR. DAVID MILLER</b>	)	No one appearing for
	)	Dr. David Miller

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 June 29, 2021. This matter was heard electronically.

Dr. David Miller (the “Member” or “Dr. Miller”) was neither present nor represented at the hearing. The Panel stood the hearing down for 15 minutes but the Member did not appear. College counsel provided evidence to establish that the Member had been served with the Notice of Hearing and advised of the hearing date. The Panel accepted that the Member was properly served with the Notice of Hearing and had adequate notice of the time, date, place and nature of the hearing. Accordingly, the Panel proceeded with the hearing in the Member’s absence and on the basis that the Member denied the allegations against him.

### **THE ALLEGATIONS**

In the Notice of Hearing dated June 15, 2020, the Member is alleged to have committed acts of professional misconduct as provided by s. 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “Code”). The allegations 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, during the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, you contravened a provision of the Dentistry Act, 1991, the Regulated Health Professions Act, 1991 or the Regulations under either of those Acts, contrary to paragraph 48 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

#### **Particulars**

- You failed to meet the College’s Continuing Education (CE) requirements for the 2011-2014 cycle as is required by paragraph 3 of Ontario Regulation 27/10.
- On or about April 26, 2017, you were informed by the Quality Assurance Committee that you were randomly selected to have your e-Portfolio reviewed for the 2011-2014 CE cycle. The subsequent review of your e-Portfolio

demonstrated a shortfall of CE points. You have failed to address this shortfall to date.

- On or about June 29, 2018, you were informed by the Quality Assurance Committee that your e-Portfolio for the 2014-2017 cycle would be reviewed. You failed to provide the College with the requested records to conduct the review of your e-Portfolio, and you failed to respond to the College's numerous attempts to contact you about this matter.
  - Due to your lack of cooperation with the Quality Assurance Committee, on or about December 12, 2018, the Quality Assurance Committee disclosed your name and its concerns/allegations to the Inquiries Complaints and Reports Committee.
2. You committed an act or acts of professional misconduct as provided by s. 51(1)(b.0.1) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that, during the years 2017 and 2018, you failed to reply appropriately or within a reasonable time to a written enquiry made by the College, contrary to paragraph 58 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

#### Particulars

- You failed to cooperate with the Quality Assurance (QA) Committee as required by s. 82(1) of the Code.
  - You did not provide a written response to the QA Committee, as repeatedly requested, and you failed to provide the requested records to conduct the review of your e-Portfolio for the 2014-2017 CE cycle.
3. You committed an act or acts of professional misconduct as provided by s. 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that, during the years 2018 and 2019, you failed to take reasonable steps to ensure that any information provided by you or on your behalf to the College was accurate, contrary to paragraph 57 of Section 2

of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars

- On or around November 20, 2018, you renewed your College membership, falsely stating on the annual renewal questionnaire that you were in compliance with the requirements of the Quality Assurance Program.
  - On or around December 3, 2019, you renewed your College membership, falsely stating on the annual renewal questionnaire that you were in compliance with the Quality Assurance Program.
4. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 in that, during the years 2011, 2012, 2013, 2014, and 2017, 2018, and 2019, you engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical, contrary to paragraph 59 of Section 2 of Ontario Regulation 853, Regulations of Ontario, 1993, as amended.

Particulars

- You failed to meet the College's CE requirements, as is required by paragraph 3 of Ontario Regulation 27/10.
- You failed to cooperate with the Quality Assurance (QA) Committee as required by s. 82(1) of the Code by failing to provide the information repeatedly requested by the QA Committee.
- Notwithstanding your non-responsiveness to the College's communication, you renewed your memberships in 2018 and 2019, providing false information on your annual renewal questionnaires.
- This pattern of conduct suggests that you are unwilling to be governed by the College.

## **THE MEMBER'S PLEA**

The Member was not present or represented at the hearing. Accordingly, he was deemed by the Panel to deny the allegations.

## **THE EVIDENCE**

The College presented evidence from two witnesses: Dr. Michael Gardner and Dr. Kalyani Baldota.

### *Testimony of Dr. Michael Gardner*

Dr. Gardner is the Director of Quality Assurance at the College. He testified about the obligations of every member of the College to participate in continuing education activities as provided in Ontario Regulation 27/10 under the *Dentistry Act, 1991* (the “Quality Assurance Regulation”). Specifically, each member must obtain 90 continuing education points in each three-year cycle. The Quality Assurance Regulation lists different categories of continuing education. In respect of two of those categories—(1), “core courses” and (2) courses offered by approved sponsors or teaching dentistry, dental hygiene or dental assisting—the Quality Assurance Regulation stipulates the minimum number of points that a member must obtain. There is no minimum point requirement for the third category, but points may be obtained in that category to bring the member’s total points to 90.

Dr. Gardner testified that details of the College’s Quality Assurance Program are posted on the College’s website. A screenshot of the relevant portions of the website was tendered in evidence as exhibit 6.

Dr. Gardner gave evidence that College members are required to record their participation in continuing education activities through a portal on the College’s website, called the e-Portfolio. Members must retain original documentation (*e.g.* course certificates and other proof of attendance documents) for a period of five years after the end of each three-year cycle. The College’s Quality Assurance Department will randomly select members to have their e-Portfolio reviewed. The review process requires selected members to ensure that they have entered all their continuing education activities in their e-Portfolio for the cycle under review, and to submit to the College original course certificates and other proof of attendance documents for the continuing education activities they have claimed towards their 90 points on their e-Portfolio.

According to Dr. Gardner's testimony, in April 2017 Dr. Miller was randomly selected for review of his e-Portfolio for the three-year cycle that ran from December 15, 2011 to December 14, 2014. Dr. Gardner sent a letter to Dr. Miller, dated April 26, 2017, informing him of the review. The letter advised Dr. Miller that he had a deadline of June 1, 2017 to ensure he had entered his continuing education activities in his e-Portfolio and to provide the College with his original supporting documentation. The letter was tendered into evidence at the hearing as exhibit 7. Enclosed with Dr. Gardner's letter was a Member User Guide for the College's Continuing Education & e-Portfolio system. The Guide provides step-by-step instructions to members on how to log in to their e-Portfolio and record their continuing education activities. The Guide also informs members of the continuation education requirements and the activities that can be claimed. The Guide includes the name and contact information for Joanne Loy, Quality Assurance and Continuing Education Administrator at the College if members have questions or require more information.

Dr. Gardner testified that Dr. Miller had not sent his original continuing education attendance documents to the College by the June 1, 2017, due date. Accordingly, starting on June 9, 2017, employees in the College's Quality Assurance department made several attempts to reach Dr. Miller by telephone. Those calls were recorded in the College's call log system and print-outs from that system were admitted into evidence as business records.

Eventually, Dr. Miller provided continuing education documents to the College for review. The College received those documents on or about July 18, 2017. However, upon reviewing the documentation, College employees determined that some of the course completion certificates Dr. Miller submitted were not originals (as was required) and Dr. Miller had a shortfall on the required points, including in the two categories with stipulated minimum point requirements, and on the required 90 total points. Ms. Loy brought these deficiencies to Dr. Miller's attention in a phone call on November 1, 2017, according to the College's call logs. Dr. Miller advised that he would try to obtain the missing certificates and would send them by November 15, 2017.

The College did not receive any further contact from Dr. Miller. Accordingly, Dr. Gardner testified that he sent Dr. Miller a letter on January 8, 2018, giving him a deadline of January 22, 2018 to provide any additional continuing education documents. Having received no response from Dr. Miller by that date, on January 28, 2018, Dr Gardner wrote to him again enclosing an official transcript of his continuing education points for the 2011-2014 cycle, which showed a shortfall of 15 core course points, 8 approved sponsor course points,

and 40 points overall. Dr. Gardner's letter advised that the College's Quality Assurance Committee would review the matter at its meeting on April 20, 2018, and that if Dr. Miller wished to provide a written submission to the Committee to consider before it makes a decision, that submission must be received at the College by April 6, 2018.

Dr. Miller did not make any written submission but on February 22, 2018, he provided some additional certificates of continuing education activities. Dr. Gardner testified that those documents were submitted to the Quality Assurance Committee.

At its meeting on April 20, 2018, the Quality Assurance Committee considered the results of Dr. Miller's e-Portfolio review. The Committee expressed concerns about Dr. Miller's apparent failure to fulfil his continuing education requirements for the 2011-2014 cycle. Even considering the additional certificates that Dr. Miller provided on February 22, 2018, he had a shortfall of 3 points in the core course category, and 14 points in the "other courses" category. These concerns were set out in a letter to Dr. Miller from Dr. Gardner on April 27, 2018. The Quality Assurance Committee requested Dr. Miller's written explanation for the shortfall as well as any efforts he had made or intended to pursue to address it. The Committee gave him a deadline of June 8, 2018. Dr. Miller failed to provide any written explanation.

Dr. Gardner testified that the Quality Assurance Committee considered Dr. Miller's matter again at its meeting on June 28, 2018. At that meeting, the Committee decided to assign Dr. Miller's e-Portfolio for review of the three-year cycle that began on December 15, 2014 and ended on December 14, 2017. Dr. Miller was advised of the Committee's decision by letter dated June 29, 2018 and was given a deadline of July 29, 2018, to complete his e-Portfolio for the 2014-2017 cycle and provide his original course certificates or other attendance documents to the College. The Quality Assurance Committee also permitted Dr. Miller to show that he had made up for the shortfall in the 2011-2014 cycle by completing a further 3 continuing education points in the "core course" category (category 1), and 14 points in the "other courses" category (category 3).

Dr. Gardner testified that Dr. Miller did not provide the information required by the Committee and did not respond to the June 29, 2018 letter. The Member also did not respond to Dr. Gardner's follow-up correspondence sent in August 2018. Dr. Miller did not provide any continuing education documents to the College or respond to a further invitation to provide written submissions to the Quality Assurance Committee.

The Quality Assurance Committee considered the matter again at its meeting on October 19, 2018. Dr. Gardner sent Dr. Miller a letter on October 22, 2018, informing him that the Committee had serious concerns regarding Dr. Miller's cooperation with the College's Quality Assurance Program and had formed an intention to disclose Dr. Miller's name and the Committee's concerns to the Inquiries, Complaints and Reports Committee ("ICRC"). Dr. Miller was given a final opportunity to make further submissions prior to the Quality Assurance Committee's next meeting on December 7, 2018. He failed to do so.

Dr. Gardner testified that according to the College's records, on November 20, 2018, Dr. Miller completed his annual declaration to renew his registration with the College for 2019. One of the questions on each member's annual declaration is: "Do you hereby declare that you are in compliance with the requirements of the quality assurance program?" Dr. Miller answered that question "Yes". Similarly, on December 13, 2017, Dr. Miller submitted his annual declaration for 2018 and answered "Yes" to that question. Dr. Gardner testified that on both occasions, Dr. Miller was not in compliance with the College's Quality Assurance Program.

On December 12, 2018, the Quality Assurance Committee sent a memorandum to the ICRC regarding the Quality Assurance Committee's concerns that Dr. Miller had committed an act of professional misconduct by failing to cooperate with the Committee and/or one or more of its assessors. The memo, which was marked as exhibit 24 at the hearing, set out the background information including the Quality Assurance Department's communications to Dr. Miller beginning on April 26, 2017.

#### ***Testimony of Dr. Kalyani Baldota***

Dr. Kalyani Baldota is an employee in the College's Professional Conduct and Regulatory Affairs Department. She testified at the hearing that on January 28, 2019, the College Registrar appointed her as an investigator to inquire into the allegations against Dr. Miller that the Quality Assurance Committee had referred to the ICRC, pursuant to ss. 75 to 79 of the Code.

Dr. Baldota testified that Dr. Miller is registered as a member of the College for the 2021 year and was first registered in 1977. She identified a screenshot of Dr. Miller's information recorded on the College's register, which includes his address, phone number and email address.



Dr. Baldota gave evidence that she made numerous attempts to contact Dr Miller by phone (at his office, cell phone and home phone numbers), letter, phone and email from June 28, 2019 to September 4, 2019. She logged and made notes of her attempts to contact Dr. Miller by phone in the College's electronic case management system. Call logs printed from that system were marked as exhibit 25 at the hearing. Dr. Baldota's numerous letters and emails to Dr. Miller were also entered as exhibits at the hearing. Dr. Baldota testified that, to date, Dr. Miller has not responded to any of Dr. Baldota's correspondence or requests that he contact her.

On September 18, 2019, Dr. Baldota delivered a report of her investigation to the College's Registrar. The report detailed the steps she took in the course of her investigation, the information she reviewed, and Dr. Miller's failures to respond to her.

Dr. Baldota testified that she attempted to send a copy of the investigation report to Dr. Miller by courier, email and regular email. By letter dated September 19, 2019, Dr. Baldota advised Dr. Miller that he had an opportunity to make written submissions in respect of the report, before the report is presented to the ICRC. She further advised him that following its investigation, the ICRC would make a decision that could include referring specified allegations of professional misconduct to the Discipline Committee. Dr. Miller did not provide any written submissions.

Dr. Baldota testified that after she had completed her report to the Registrar, she received information from staff in the College's Quality Assurance department advising that on December 3, 2019, Dr. Miller renewed his registration with the College for 2020 and answered "Yes" to the question "Do you hereby declare that you are in compliance with the requirements of the quality assurance program?".

On April 3, 2020, Dr. Baldota prepared a memo for the ICRC providing an update on the investigation of Dr. Miller. The ICRC met on May 4, 2020 to consider the matter and formed an intention to refer specific allegations of professional misconduct to the Discipline Committee. Dr. Miller was advised of that intention in a letter dated May 6, 2020, and given an opportunity to make written submissions before the ICRC panel finalized its decision. Dr. Miller did not provide any submissions.

On June 8, 2020, the ICRC made a decision to refer specified allegations of professional misconduct against Dr. Miller to the Discipline Committee. Dr. Miller was sent a copy of that decision and was served with the Notice of

Hearing. Dr. Miller did not respond to the College or its external counsel at any time up to the hearing in this matter.

## **DECISION**

Having considered the evidence and submissions of the College, the Panel found that the Member committed professional misconduct as set out in all the allegations in the Notice of Hearing.

## **REASONS FOR DECISION**

The Panel recognized that the College bears the onus of proving the allegations against the Member on the balance of probabilities, using clear, cogent and convincing evidence.

Having carefully considered the onus and standard of proof, the evidence of the College and the submissions of counsel for the College, the Panel found that the Member committed the acts of professional misconduct alleged in the Notice of Hearing.

Most of the evidence proving the allegations against Dr. Miller was provided through the documents that were tendered as exhibits at the hearing, including the various written communications that the College sent to Dr. Miller, the College's call logs, Dr. Miller's register information, and the course certificates that he provided to the College. In addition, the panel accepted the evidence of Dr. Gardner and Dr. Baldota. Dr. Gardner testified in a clear and factual manner. Dr. Baldota testified in a factual and orderly manner. The evidence of Dr. Gardner and Dr. Baldota was not challenged and did not appear to be embellished. It was clear, internally consistent, and consistent with the documentary evidence.

### ***The Panel's finding on Allegation 1***

Allegation 1 in the Notice of Hearing is that Dr. Miller committed professional misconduct during the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018 by contravening a provision of the *Dentistry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.

The Quality Assurance Regulation is a regulation under the *Dentistry Act, 1991*. The Quality Assurance Regulation sets out the continuing education requirements of all members, including Dr. Miller. Subsection 3(4) provides that every member of the College must complete 90 continuing education points for

every three-year cycle, including at least 15 points obtained from successfully participating in core courses approved by the Quality Assurance Committee (category 1) and 45 points obtained from successfully participating in courses offered by approved sponsors (category 2). Subsection 3(7) of the Quality Assurance Regulation requires each member to retain a continuing education portfolio for each three-year cycle, in the format set out by the Quality Assurance Committee, and ensure that it contains records evidencing the member's attendance at and participation in continuing education activities. Subsection 3(8) requires the member to retain that portfolio for five years from the end of each three-year cycle.

Dr. Gardiner testified, and the documentary evidence showed, that Dr. Miller was deficient in meeting the continuing education requirements under the Quality Assurance Regulation, and to date has not remedied the deficiency.

The evidence presented at the hearing was that when the Member was randomly selected for a review of his e-Portfolio for the 2011-2014 cycle, he submitted some original course certificates and other documentation providing his attendance and some continuing education programs for the 2011-2014 cycle. However, he was three points short of the required minimum 15 points in the core course category (category 1), and was 14 points short in "other courses" category (category 3. There is no required minimum of category 3 courses, but courses in that category may be used to bring the member's total to 90 points).

After the Quality Assurance Committee considered the results of the review of Dr. Miller's e-Portfolio for the 2011-2014 cycle, it directed a review of his e-Portfolio for the 2014-2017 cycle and required him to demonstrate that he made up his shortfall in credits from the previous cycle. Dr. Miller failed to provide any documentation evidencing his attendance at and participation in continuing education activities totalling at least 90 points for the 2014-2017 cycle.

Dr. Miller had ample opportunity during the quality assurance review process, the Quality Assurance Committee's consideration of the matter, the ICRC's consideration of the matter, and this discipline process, to show that he had met the minimum 90 points despite what the documentary evidence tendered by the College shows. He failed to do so. Accordingly, the Panel found that for each year from 2011 to 2017, the Member contravened the provisions of the Quality Assurance Regulation relating to his continuing education requirements.

With respect to the year 2018, there are two aspects to the Panel's finding that the member contravened a provision of the *Dentistry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations. First, from and after June 29,

2018, when the Member was informed by the Quality Assurance Committee that his e-Portfolio for the 2014-2017 cycle would be reviewed, the Member failed to respond to the College's numerous attempts to contact him. Second, on November 20, 2018, Dr. Miller renewed his membership with the College and declared on the annual renewal questionnaire that he was in compliance with the Quality Assurance Program. Yet Mr Miller had been advised numerous times prior to this date that he did not comply with the Quality Assurance requirements. The requirement that a member cooperate with and respond to inquiries from the Quality Assurance Committee is reflected in s. 51(1)(b.0.1) of the Code and s. 2.58 of Ontario Regulation 853/93 under the *Dentistry Act, 1991* (the "Professional Misconduct Regulation") (discussed further below in respect of Allegation 2). The requirement that a member not provide inaccurate information to the College is reflected in s. 2.57 of the Professional Misconduct Regulation.

For these reasons, the Panel was satisfied on a balance of probabilities that the Member committed professional misconduct under s. 51(1)(c) of the Code by contravening the continuing education requirements set out in the Quality Assurance Regulation for the years 2011-2018.

### ***The Panel's finding on Allegation 2***

Allegation 2 in the Notice of Hearing is that the Member committed acts of professional misconduct under s. 51(1)(b.0.1) of the Code by failing to cooperate with the Quality Assurance Committee.

The testimony of Dr. Gardiner and the exhibits prove that Dr. Miller failed to cooperate with the Quality Assurance Committee. Dr. Gardner and other employees in the Quality Assurance department made countless attempts to contact the Member so that he could provide proof of his attendance at and participation in continuing education courses to satisfy the minimum requirements. They made further attempts to contact Dr. Miller once the Quality Assurance Committee had determined there was a shortfall in his points, and gave him ample opportunity to correct the deficiency. Dr. Miller failed to respond to those attempts. His last contact with the Quality Assurance department was in November 2017 (other than when he sent additional course documentation to the College in February 2018). Dr. Miller was given several deadlines to respond, and those deadlines were extended on numerous occasions, but the Member failed to comply. As a result of Dr. Miller's shortfall for the 2011-2014 cycle, the Quality Assurance Committee directed a review of his e-Portfolio for the 2014-2017 cycle. Dr. Miller failed entirely to respond to that direction.

The College alleges, and the Panel finds, that the Member's failure to cooperate with the Quality Assurance Committee is established by his failure to respond to written enquiries from the Quality Assurance Committee. It is an act of professional misconduct under section 2.58 of the Professional Misconduct Regulation for a member to fail to reply appropriately or within a reasonable time to a written enquiry made by the College. The College tendered evidence to prove that the Quality Assurance Committee made numerous written enquiries to Dr. Miller with respect to the review of this e-Portfolio for the 2011-2014 and 2014-2017 cycles, and he failed to respond appropriately or within a reasonable time—in most instances, he failed to respond at all. Specifically:

- On April 26, 2017, Dr. Gardner, in his capacity as Director of Quality Assurance at the College, informed Dr. Miller that he had been randomly selected for review of his e-Portfolio for the 2011-2014 cycle and asked him to ensure his e-Portfolio was completed and his original course attendance documents were received at the College by June 1, 2017 (exhibit 7).
- Dr. Miller did not provide the documents by June 1, 2017. He did provide some documents on July 18, 2017, but they were incomplete. After numerous follow up requests by telephone, which were recorded in the College's call log system (exhibit 8), Dr. Gardner wrote to Dr. Miller on January 9, 2018, to advise him that his e-Portfolio had not been completed and was showing a shortfall in all categories. Dr. Gardner asked Dr. Miller to provide the College with any additional continuing education documents by January 22, 2018 (exhibit 11). Dr. Miller did not respond to or provide any further documents by January 22, 2018. On January 29, 2018, Dr. Gardner wrote to him again and invited him to provide a written submission to the Quality Assurance Committee no later than April 6, 2018 (exhibit 12). Dr. Miller did not provide any written submission but he did provide some further continuing education course certificates, which the College received on February 22, 2018.
- On April 27, 2018, Dr. Miller was informed in a letter from Dr. Gardner that the Quality Assurance Committee had concerns about his apparent failure to fulfil his continuing education requirements for the 2011-2014 cycle, and had requested a written explanation "regarding this shortfall, as well as any efforts [Dr. Miller] may have made or intend to pursue in the immediate future to address it." He was given a deadline of June 8, 2018, to provide the submission (exhibit 15). Dr. Miller did not respond to this correspondence.

- On June 12, 2018, Dr. Gardner wrote to Dr. Miller again regarding the Quality Assurance Committee's request for a written explanation. He asked for the written submission "as soon as possible" (exhibit 16). Dr. Miller failed to respond to that letter and the Committee's request.
- On June 29, 2018, Dr. Gardner wrote a letter to Dr. Miller advising that the Quality Assurance Committee had assigned his e-Portfolio for the 2014-2017 cycle for review and gave him a deadline of July 29, 2018, to complete his e-Portfolio and send his original course attendance documents to the College (exhibit 17). Dr. Miller did not respond to that request.
- On August 1, 2018, Dr. Gardner wrote to Dr. Miller noting that Dr. Miller had not provided his original continuing education documents for the 2014-2017 cycle to the College as required and asked Dr. Miller to contact him (exhibit 18). Dr. Miller did not respond. Dr. Gardner made a follow up request in writing on August 16, 2018 (exhibit 19). Again, Dr. Miller did not respond.
- On September 4, 2018, Dr. Gardner informed Dr. Miller that the matter would be considered by the Quality Assurance Committee and gave him a deadline of October 5, 2018, to provide a written submission for the Committee's consideration (exhibit 20). Dr. Miller did not answer that letter.
- On October 22, 2018, Dr. Gardner wrote to Dr. Miller again on behalf of the Quality Assurance Committee to provide him with a further opportunity to make written submissions. Dr. Miller was asked to provide his submissions to the College by November 23, 2018 (exhibit 21). Dr. Miller did not respond or provide any written submissions to the Quality Assurance Committee.

For the vast majority of these inquiries, the Member failed to respond entirely. He did provide a partial response in the early stages of the initial, random selection review by sending some continuing education course documents to the College on July 18, 2017 and February 22, 2018. However, these responses came after numerous missed deadlines, extensions and follow-up inquiries from the College. After February 22, 2018, Dr. Miller ceased all communication with the College and provided no response whatsoever in respect of the Quality Assurance Committee's directions for review of the 2014-2017 cycle.

Based on the Member's failure to respond to and provide information requested by the Quality Assurance Committee as detailed above, the Panel finds that the Member failed to cooperate with the Quality Assurance Committee, which is the obligation of each member of the College under s. 82(1) of the Code.

***The Panel's finding on Allegation 3***

The Panel concluded that Dr. Miller committed professional misconduct as set out in Allegation 3, which alleges that the Member failed to take reasonable steps to ensure that any information he provided to the College was accurate, contrary to section 2.57 of the Professional Misconduct Regulation.

The document marked as exhibit 23 at the hearing is a print-out of Dr. Miller's Annual Fee Renewal Declarations from 2015-2019. It shows, and Dr. Gardner testified, that when Dr. Miller renewed his membership on November 20, 2018 and on December 3, 2019, he declared that he was in compliance with the Quality Assurance Program. In fact, for the reasons set out above regarding the Panel's finding on Allegation 1, Dr. Miller was not in compliance with the Quality Assurance Program from 2011 to 2017. As of November 20, 2018 and December 3, 2019, Dr. Miller was aware of his non-compliance because it had been brought to his attention in correspondence sent to him on behalf of the Quality Assurance Committee, including the letter Dr. Gardiner sent him on October 22, 2018 (exhibit 21) and in Dr. Baldota's report to the Registrar.

The Panel therefore concludes that in responding "yes" when he was asked on the annual declarations "Do you hereby declare that you are in compliance with the requirements of the quality assurance program?", Dr. Miller failed to take reasonable steps to ensure that the information he provided to the College was accurate.

***The Panel's finding on Allegation 4***

Allegation 4 in the Notice of Hearing is that Dr. Miller engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable, unprofessional and unethical. The particulars of this allegation covers the specific matters discussed above—the Member's failure to meet the College's continuing education requirements, his failure to cooperate with the Quality Assurance Committee by failing to provide the information it requested, and his provision of false information on the annual renewal declarations—and there is an additional particular. The College alleges that Dr. Miller has engaged in a

pattern of conduct which suggests that he is unwilling to be governed by the College.

As explained above, the Panel found that Dr. Miller failed to co-operate with the Quality Assurance Committee, failed to rectify his continuing education credit shortfall for the years 2011 to 2017, failed to reply to College communications and provided false information on his annual renewal declaration. Dr. Miller's behaviour is consistent with that of a member who does not respect the authority of his regulatory body and does not show any desire to be remediated. Conduct of this nature would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical. The Panel was satisfied that Dr. Miller's conduct demonstrated that he is unwilling to be governed.

### **THE COLLEGE'S POSITION ON PENALTY**

After deliberating, the Panel announced its decision on the findings of professional misconduct orally at the hearing. The hearing then proceeded to the penalty phase.

The College presented the Panel with a penalty submission that offered two alternative approaches. In broad strokes, the College's principal position was that the appropriate penalty is a reprimand and revocation of the Member's certificate of registration. The alternative position was a reprimand, a suspension of at least 12 months, and the imposition of terms, conditions and limitations on the Member's certificate of registration. Under either option, the College sought costs in the amount of \$15,000.00. In full, the submission on penalty and costs provided as follows:

1. The Royal College of Dental Surgeons of Ontario ("the College") respectfully submits that, in view of the findings of professional misconduct by the Panel of the Discipline Committee and the evidence, the Panel should make the following 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 revoke the Member's certificate of registration; and



- (c) requiring the Member to pay costs to the College in the amount of \$15,000 in respect of this discipline hearing, such costs to be paid in full within thirty (30) days of this Order becoming final.
2. In the alternative, the College respectfully submits that the Panel make the following 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 twelve (12) months or until such time as the Member successfully completes the Practice Conditions set out in subparagraph 2(d) below, whichever is later. This suspension will commence on the date this Order becoming final and shall run without interruption;
  - (c) directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration (the "Suspension Conditions"), which conditions shall continue until the suspension of the Member's certificate of registration as referred to in subparagraph 2(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, and
  - 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, or
  - 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, subject to the following:
  - 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, and
  - c. the Member must not sign insurance claims for work that has been completed 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 2(c)(i)-(v) above shall be removed at the end of the period that the Member's certificate of registration is suspended by virtue of subparagraphs 2(b) and 2(d); and
- (d) directing the Registrar to impose the following additional terms, conditions and limitations on the Member's certificate of registration (the "Practice Conditions"), namely:
  - (i) the Member shall not engage in the practice of dentistry until he has completed the review of his e-

Portfolio as required by the Quality Assurance Committee in its letter dated June 29, 2018 and any further requirements or inquiries by the Quality Assurance Committee, to the satisfaction of the Quality Assurance Committee,

- (ii) the Member shall successfully complete, at his own expense, the ProBE Program for Professional/Problem-Based Ethics (must obtain an "unconditional pass" grade) within twelve (12) months of this Order becoming final, and
  - (iii) the Practice Conditions imposed by virtue of subparagraph 2(d)(i) and (ii) 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 programs described in subparagraphs 2(d) above have been completed successfully; and
  - (e) requiring the Member to pay costs to the College in the amount of \$15,000 in respect of this discipline hearing, such costs to be paid in full within thirty (30) days of this Order becoming final.
3. The College further submits that, pursuant to the Code, 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.

### **SUBMISSIONS OF COLLEGE COUNSEL**

College counsel submitted that public protection and confidence are paramount in any penalty decision. Considering the goals of penalty, revocation is most appropriate. In this case, given the Panel's findings that Dr. Miller is ungovernable, there are real questions as to how a penalty could specifically deter the Member. Revocation and a reprimand are the only effective means to provide specific and general deterrence. Dr. Miller's conduct does not lend itself to remediation. He failed to comply with the Quality Assurance Program and did not respond to the College's efforts to rectify his shortfall in continuing

education credits. A member who will not respond to the College's efforts to remediate him cannot be rehabilitated through a penalty order.

Regarding the seriousness of the misconduct, College counsel acknowledged that a failure to comply with continuing education requirements is, in general, not the most serious professional misconduct. It does not harm patients in any way. However, College counsel submitted that the continuing education requirements are a matter of member competence. The College has a duty to regulate its members in the public interest, which encompasses competence as well as conduct. If a member does not comply with the continuing education program, the public cannot be assured of the member's competence. In this case, the seriousness arises from Dr. Miller's ungovernability, which is very problematic in a self-governing profession. When members fail to comply with their continuing education requirements, but correct the non-compliance, that is less serious. In Dr. Miller's case, he did not comply and then ignored the attempts by College staff to contact him, failing to bring himself into compliance, and did not engage with the discipline process. The ungovernability displayed by that conduct is a very serious matter.

College counsel noted that Dr. Miller's long career (44 years) with no prior discipline appearances is a mitigating factor.

In terms of aggravating factors, College counsel pointed to evidence tendered in the hearing that the Member did not complete the requirements of another aspect of the Quality Assurance Program (the practice enhancement tool, or "PET" exam) in 2015. That matter did not proceed to discipline and no orders were made, but it did end up before the ICRC such that when the member was randomly selected for review of his e-Portfolio in 2017, he would have known that it could come before the ICRC. In addition, the Quality Assurance department made numbers calls and outreach attempts, and extended numerous deadlines for the Member to respond and deal with the situation. From April 2017 to June 2018 he was given the opportunity to correct his non-compliance. He was told what his obligations were and was warned about the consequences of non-compliance. He ignored the warnings, failed to respond and never showed remorse. To this day—four years after he was randomly selected in 2017—he has failed to rectify the shortfall from the 2011-2014 cycle. Instead, he misrepresented in his annual declarations that he was in compliance. He has refused to engage with three statutory committees of the College (Quality Assurance, ICRC and, now, the Discipline Committee). This ungovernability is a significant aggravating factor that calls for revocation. No measures can be put in place to deter or remediate the Member, because he has not been

remediated up to now, despite multiple efforts. Revocation is the only way to react to a Member who is ungovernable.

College counsel noted that there are no cases from the Discipline Committee of this College where a member has been completely uncommunicative. She presented three similar cases from other colleges under the *Regulated Health Professions Act, 1991*. In two cases from the College of Dental Hygienists of Ontario (*Christine Plasaj, 2016* and *Norah Thon, 2016*) the member failed to comply with the direction of the quality assurance committee and failed to communicate with the College. The discipline committee ordered revocation. In another case from the Ontario College of Pharmacists (*Ontario (College of Pharmacists) v. Patel, 2018 ONCPDC 15*), the discipline committee ordered a 12 month suspension, after finding that the member had some degree of willingness to be governed. The College relied on that case to support its alternative penalty position that included a suspension of at least 12 months, along with terms, conditions and limitations on the Member's certificate of registration.

#### **PENALTY AND COSTS DECISION**

Having considered the findings of professional misconduct, the relevant evidence and the submissions of the College, the Panel made the following order:

1. The Member shall 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 revoke the Member's certificate of registration; and
3. The Member shall pay costs to the College in the amount of \$15,000 in respect of this discipline hearing, such costs to be paid in full within thirty (30) days of this Order becoming final.

#### **REASONS FOR PENALTY AND COSTS DECISION**

The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. These objectives are achieved

through a penalty that addresses the principles of general deterrence, specific deterrence and, where possible and appropriate, rehabilitation and remediation of the Member's practice.

Dr. Miller exhibited a blatant disregard towards the College and its Quality Assurance Committee, as demonstrated by his failure to fulfil his continuing education obligations and then his refusal to engage with the Quality Assurance Committee in its efforts to have him explain and remediate his shortfall. The Member's failure to respond to the numerous requests and communications from College staff regarding his continuing education shortfall, or to address that shortfall, shows disdain towards the College and its regulatory responsibilities.

In view of the Member's refusal to be governed, the Panel determined that revocation is the only means to provide public protection, specific deterrence and general deterrence. Misconduct of this nature will not be tolerated by the College.

Although Dr. Miller has had a 44 year dental career without a previous appearance before the Discipline Committee (a mitigating factor), the aggravating factors in this case are substantial. The Member had ample opportunity to engage with the Quality Assurance Committee and remedy the deficiencies in his continuing education activities, but he chose not to do so. He then provided a false declaration to the College on three occasions when he renewed his Certificate of Registration. Finally, he failed to engage with this discipline process or attend his discipline hearing to offer an explanation to the Panel.

The Panel carefully considered the two alternative penalty proposals presented by the College. The Panel concluded that in light of Dr. Miller's ungovernability, as shown by his lengthy pattern of conduct in failing to engage with the College, a suspension would not provide adequate public protection or maintain public confidence in the profession. The College cannot properly regulate members who refuse to respect its oversight responsibility and who refuse to engage with its statutory committees. A reprimand and revocation are the only appropriate penalty in all circumstances of this case. It is also consistent with the penalties ordered by the discipline committee of the College of Dental Hygienists of Ontario under similar circumstances in the *Plasaj* and *Thon* cases.

The Panel determined that this was an appropriate case for costs and ordered that the Member pay to the College \$15,000.00 for its costs, as requested. The

Panel further orders that this payment be made within 30 days of the date of the release of this decision.

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



July 22, 2021

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Dr. Richard Hunter

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Date

**Addendum to reasons, September 8, 2021:** Paragraph 3 of the Panel's order required that the Member appear before the Panel to be reprimanded. A hearing by video conference was scheduled for September 8, 2021, for the reprimand to be delivered orally to the Member. The Member did not appear at the video conference hearing on September 8, 2021 to receive the reprimand, despite having been given notice by the College of the date, time and video conference details. The Panel Chair read the reprimand into the record. A copy of the reprimand is attached as Appendix "A" to these Reasons.



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Dr. Richard Hunter



**RCDSO v. Dr. David Miller**

Dr. Miller, 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.

The panel has found that you have engaged in multiple acts of professional misconduct. The misconduct related to failing to complete your continuing education requirements for the 2011-2014 and 2014-2017 cycles as required by paragraph 3 of Ontario Regulation 27/10. You failed to respond to multiple inquiries from the College. You then renewed your membership with the College in 2018 and 2019, providing false information on your annual renewal questionnaires about your compliance with continuing education requirements. 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 willfully ignoring your obligation to comply with the continuing education requirements as put forward by the Quality Assurance Committee. You failed to respond to numerous communications made by College representatives. You failed to attend your discipline hearing to offer an explanation.

We have ordered the penalty of revocation, being the most significant penalty this Committee can impose. It is appropriate in this case because you have shown complete disregard for the regulatory authority of the College and therefore this Panel considers you ungovernable.