DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

BETWEEN:

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

-and-

CYNTHIA DEMARCO

PANEL MEMBERS:

Vanessa Pereira Professional Member, Panel Chair

Mary Yeomans Professional Member

Meghan LeuprechtPublic MemberErin BettsPublic Member

Jacqueline White Professional Member

COUNSEL:

Anastasia-Maria Hountalas for the College of Dental Hygienists of Ontario

Elyse Sunshine Independent Legal Counsel

HEARD: **April 29, 2022**

DECISION AND REASONS FOR DECISION

A panel of the Discipline Committee of the College of Dental Hygienists of Ontario (the "Panel") heard this matter virtually by Zoom videoconference on April 29, 2022.

Ms. DeMarco (the "Registrant") was not present for the hearing. The hearing recessed for 15 minutes to allow for the Registrant to appear. Upon reconvening, the Panel noted that the Registrant was not in attendance and was not represented by counsel.

Counsel for the College provided satisfactory evidence that the Registrant had received adequate notice of the date, time and link to the hearing. The Panel was satisfied that the Registrant had been provided with appropriate notice of the hearing and accepted that the hearing could proceed in the Registrant's absence pursuant to section 7 of the Statutory Powers Procedure Act, 1990, c S.22.

At the conclusion of the hearing, the Panel delivered its findings orally with written reasons to follow.

THE ALLEGATIONS

The allegations of professional misconduct against the Registrant were listed in the Notice of Hearing, dated October 11, 2019, which was filed as Exhibit 1, and read as follows:

- The Registrant was at the material times a duly registered dental hygienist in Ontario, holding a certificate of registration in the General class from the College of Dental Hygienists of Ontario (the "College").
- 2. On February 8, 2019, the Registrant was suspended for non-payment of fees.
- 3. In or about January 2017, the Registrant reported to the College that she had been charged with certain criminal offences. The Registrant failed to respond in a timely way to the College's request for further information about the charges. The matter was subsequently referred to the Inquiries, Complaints and Reports Committee (the "ICRC") for an investigation.
- 4. On or about November 5, 2018, the ICRC directed the Registrant to attend for a caution and to successfully complete a Specified Continuing Education or Remediation Program consisting of the Professional/Problem-Based Ethics ("PROBE") course delivered by the Center for Personalized Education for Physicians on or before November 8, 2019, and to provide proof to the Registrar, by May 8, 2019, that she had registered for PROBE.
- 5. The Registrant was sent a copy of the ICRC's decision and reasons on November 8, 2018.
- 6. The Registrant has failed to attend for the caution and she has failed to provide proof of registering for the PROBE course by May 8, 2019.
- 7. In the course of investigating her alleged failure to comply with the November 5, 2018, ICRC decision, the Registrant failed to respond to the investigator's numerous requests for an interview.
- 8. A copy of the investigator's report was sent to the Registrant on or about August 2, 2019. The Registrant did not provide a substantive response to the report.
- 9. It is alleged that the above conduct constitutes professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991:
 - a. paragraph 44 (failing to attend an oral caution of the Complaints [ICRC] Committee); and/or

- b. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and/or
- c. paragraph 50 (failing to cooperate with an investigator of the College); and/or
- d. paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or
- e. paragraph 53 (conduct unbecoming a dental hygienist).

REGISTRANT'S PLEA

Given that the Registrant did not attend the hearing, and was not represented by Counsel, she was deemed to have denied the allegations set out in the Notice of Hearing.

EVIDENCE

Counsel for the College tendered documentary evidence and called two witnesses to establish its case on the merits.

Evidence of Eva Rosenstock

Eva Rosenstock is the Case Manager, Complaints and Investigations at the College ("Ms. Rosenstock"). She gave evidence about the Registrant's registration history and the College's investigation in this matter.

Ms. Rosenstock testified that when this matter originated in 2017, she was a Manager, Complaints and Investigations, at the College and was responsible for taking inquiries and complaints, managing the College's investigations and liaising with the College's Registrar. Ms. Rosenstock explained that when the College commenced an investigation into a particular matter, her role was to manage the administrative side of the investigation.

Ms. Rosenstock testified that she managed the administration of the ICRC investigation into the Registrant's conduct. In particular, Ms. Rosenstock identified the Registrant's public register profile (Exhibit 3, Tab 1) and an ICRC decision dated November 5, 2018 (Exhibit 3, Tab 2) directing the Registrant to attend for a caution and successfully complete a Specified Continuing Education or Remediation Program ("SCERP") consisting of the PROBE ethics course. Ms. Rosenstock testified that the ICRC's decision arose out of events in January 2017 when the Registrant reported to the College that she had been charged with certain criminal offences and subsequently failed to respond in a timely way to the College's request for further information about the charges.

Ms. Rosenstock then identified and reviewed her correspondence with the Registrant regarding the ICRC's order. In particular, she identified her November 8, 2018, correspondence to the Registrant enclosing a copy of the ICRC's decision dated November 5, 2018, as well as her email

correspondence with the Registrant regarding her compliance with the ICRC's order. Ms. Rosenstock confirmed that, despite being ordered by the ICRC to attend for a caution and register and complete the PROBE ethics course, the Registrant did neither.

Ms. Rosenstock testified that, as a result, the College commenced a subsequent investigation into the Registrant's non-compliance with the ICRC's decision dated November 5, 2018. Ms. Rosenstock stated that following the completion of the College's investigation, she provided a copy of the investigation report to the Registrant on August 2, 2019 (Exhibit 3, Tab 10), but that the Registrant did not provide any substantive response.

Evidence of Roula Anastasopoulos

Roula Anastasopoulos, the College's investigator ("Ms. Anastasopoulos"), gave evidence about her investigation into the Registrant's alleged conduct in this matter.

Ms. Anastasopoulos testified that she was appointed to investigate allegations that the Registrant failed to comply with the ICRC's decision dated November 5, 2018, and identified her Appointment of Investigator (Exhibit 3, Tab 13). Ms. Anastasopoulos explained her investigation and, in particular, her numerous attempts to contact the Registrant to arrange an interview. Ms. Anastasopoulos identified and reviewed her correspondence with the Registrant (Exhibit 3, Tabs 14-15).

Ms. Anastasopoulos testified that, after an extended period of non-responsiveness, the Registrant indicated in an email on July 12, 2019, that she was available for an interview "whenever." Ms. Anastasopoulos testified that she subsequently tried to arrange an interview with the Registrant, but that the Registrant did not attend the interview or otherwise respond to Ms. Anastasopoulos going forward. Ms. Anastasopoulos confirmed that she was never able to interview the Registrant as part of her investigation.

SUBMISSIONS OF THE PARTIES ON FINDINGS

The College submitted that the Registrant's conduct constituted the acts of misconduct as set out in the Notice of Hearing.

The College submitted that there was clear, cogent and convincing evidence that the Registrant engaged in professional misconduct when she failed to attend for an oral caution as required by the ICRC and otherwise failed to comply with the ICRC's November 5, 2018, order. The ICRC directed the Registrant to attend for a caution and complete the PROBE ethics course in its November 5, 2018, decision (Exhibit 3, Tab 2). A copy of the ICRC's decision was sent to the Registrant on November 8, 2018. Contrary to the ICRC's order, the Registrant did not attend to receive a caution. The Registrant did not confirm her registration in the PROBE ethics course.

The College also submitted that the evidence establishes that the Registrant engaged in professional misconduct when she failed to cooperate with Ms. Anastasopoulos' investigation.

Ms. Anastasopoulos described her numerous attempts to contact the Registrant to arrange an interview. Despite the Registrant indicating that she was available to attend an interview in July 2019, the Registrant did not answer her phone or otherwise attend for an interview at any point or respond any further.

The College submitted that the Registrant's conduct also would be disgraceful, dishonourable or unprofessional, and unbecoming a dental hygienist. The College submitted that the Registrant's conduct demonstrates a serious and persistent disregard for the College's regulatory authority and public protection mandate. The Registrant's failure to comply with the ICRC's order and subsequent failure to cooperate with Ms. Anastasopoulos' investigation demonstrates a concerning lack of understanding about her obligations as a regulated professional.

The Registrant did not attend the hearing and did not make any submissions.

DECISION ON FINDINGS AND REASONS

The College bears the onus of proving the allegations set in the Notice of Hearing. The standard of proof is on a balance of probabilities, whether it is more likely that the alleged conduct occurred. The Panel found that the allegations have been proven by the College on a balance of probabilities by evidence that is clear, cogent and convincing. The Panel found that the Registrant committed the following acts of professional misconduct:

- a. paragraph 44 (failing to attend an oral caution of the Complaints [ICRC] Committee); and/or
- b. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and/or
- c. paragraph 50 (failing to cooperate with an investigator of the College); and/or
- d. paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or
- e. paragraph 53 (conduct unbecoming a dental hygienist).

The Panel found the College's witnesses to be credible. They each had first-hand knowledge of the events in question, which strengthened the reliability of their evidence. Their testimony was corroborated by documentary evidence filed by the College. The Panel accepted the witnesses' uncontroverted evidence in its entirety.

The Panel found that the College's evidence established, on a balance of probabilities, the factual allegations the Notice of Hearing, which supported findings that the Registrant engaged in the acts of professional misconduct alleged.

The Panel's findings with respect to each act of professional misconduct are outlined below.

Failing to attend an oral caution (paragraph 44) Failing to comply with an order or direction of a Committee (paragraph 45)

There was documentary and uncontroverted oral evidence that the Registrant had been ordered to attend an oral caution and to complete a SCERP and did not do so. There was correspondence from the Registrant which indicates that she received and was aware of this order. Further, the Registrant took issue with the imposition of the caution and informed Ms. Rosenstock that she would not be attending the oral caution. She further discussed that she intended to resign from the College. The Registrant also took issue with the requirement to complete the SCERP and there were several emails from her taking issue with the requirement to complete PROBE. At no time did the Registrant attend the oral caution or comply with the order of the ICRC and accordingly, these acts of misconduct have been made out on a balance of probabilities.

Failing to cooperate with an investigator (paragraph 50)

There was overwhelming evidence of the attempts made by Ms. Anastasopoulos to schedule an investigation interview with the Registrant and no interview ever took place. Initially, Ms. Anastasopoulos attempted to get in touch with the Registrant on three occasions, and there was no response. The Registrant did respond on one occasion and said she could meet but ultimately, attempts to schedule that meeting were unsuccessful. Every member of the profession is obliged to cooperate with the College in its investigations, and to respond appropriately and within a reasonable time to College inquiries when requested to do so. This is part of the responsibility of belonging to an independent, self-regulating body. The obligation to respond to communications from a professional regulator and to cooperate with investigators is part of the ethical duty as a member of a regulated profession. The Registrant did not comply with her duties in that regard and ultimately engaged in misconduct by failing to cooperate with the College's investigator.

Disgraceful, dishonourable or unprofessional conduct (paragraph 52) Conduct unbecoming (paragraph 53)

The Registrant's failure to respond to the College and her disregard for her professional obligations by not complying with the order of the ICRC reflects poorly on the profession and undermines public confidence in the integrity of the profession and its members. It is well established that in order to ensure effective governance, a member of a regulated profession must respond to and comply with their regulator. Her lack of timely response frustrates the ability of the College to regulate its registrants. Consequently, the Registrant's failure to respond to communications from her regulator demonstrated a lack of integrity, ethics, and respect for her professional obligations, which undermines the College's ability to regulate the profession and protect the public and constitutes disgraceful, dishonourable and unprofessional conduct.

Moreover, the Panel accepted Independent Legal Counsel's advice that an allegation of unbecoming conduct is generally intended to capture conduct that occurs outside the practice of the profession. In this case, the Registrant's misconduct did not occur in a treatment room or

relate to direct treatment of a client, but it demonstrated the Registrant's lack of respect for the College and the principles of self-governance. Accordingly, this conduct would reasonably be regarded by registrants as conduct unbecoming a dental hygienist.

A penalty hearing should be scheduled at the first available opportunity.

I, Vanessa Pereira, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Vanessa Pereira, Professional Member, Panel Chair

August 9, 2022

Date

Mary Yeomans, Professional Member Meghan Leuprecht, Public Member Erin Betts, Public Member Jacqueline White, Professional Member

DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

Vanessa Pereira, Professional Member, Chair)	
Mary Yeomans, Professional Member)	FRIDAY,
Meghan Leuprecht, Public Member)	THE 6TH DAY OF
Erin Betts, Public Member)	JANUARY 2023
Jacqueline White, Professional Member)	

BETWEEN:

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

-and-

CYNTHIA "CINDIE" DEMARCO

ORDER

THIS HEARING was held on April 29, 2022 and January 6, 2023, virtually by way of videoconference.

ON READING the Notice of Hearing dated October 11, 2019, and on hearing the evidence and submissions of counsel for the College of Dental Hygienists of Ontario (the "College"):

- **1. THE DISCIPLINE COMMITTEE ORDERS** that Cynthia "Cyndie" DeMarco ("the Registrant") has committed professional misconduct pursuant to Clause 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act, 1991* and as defined in the following paragraphs of section 15 of Ontario Regulation 218/94 made under the *Dental Hygiene Act, 1991*:
 - a. paragraph 44 (failing to attend an oral caution of the Complaints [ICRC] Committee);
 - b. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College);
 - c. paragraph 50 (failing to cooperate with an investigator of the College);
 - d. paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and
 - e. paragraph 53 (conduct unbecoming a dental hygienist).

2. THE DISCIPLINE COMMITTEE FURTHER ORDERS:

- a. The Registrar is directed to revoke the Registrant's certificate of registration immediately; and
- b. The Registrant is required to pay the College's costs in the amount of \$15,549.85, in monthly installments over fifteen (15) months, with the first payment being due thirty (30) days from the date of this Order. Payments one (1) to fourteen (14) shall be in the amount of \$1,000. Payment fifteen (15) shall be in the amount of \$1,549.85.

Date: January 6, 2023

Vanessa Pereira, Professional Member, Chair

DISCIPLINE COMMITTEE OF THE COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

BETWEEN:

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

-and-

CYNTHIA DEMARCO

Panel Members:

Vanessa Pereira Professional Member, Panel Chair

Erin Betts Public Member **Meghan Leuprecht** Public Member

Jacqueline WhiteProfessional MemberMary YeomansProfessional Member

Counsel:

Anastasia-Maria Hountalas for the College of Dental Hygienists of Ontario

Elyse Sunshine Independent Legal Counsel

Heard: January 6, 2023

DECISION AND REASONS FOR DECISION ON PENALTY AND COSTS

A panel of the Discipline Committee of the College of Dental Hygienists of Ontario (the "Panel") heard this matter virtually by Zoom videoconference on January 6, 2023.

Ms. DeMarco (the "Registrant") was present for the hearing and confirmed at the outset of the hearing that she was aware of her right to seek the assistance of legal counsel.

FINDINGS OF PROFESSIONAL MISCONDUCT

By decision dated August 9, 2022, the Panel found that the Registrant had committed the following acts of professional misconduct under section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991 (the "Act") in that she:

- a. failed to attend an oral caution of the Complaints [ICRC] Committee contrary to paragraph 44;
- b. failed to comply with an order or direction of a Committee or a panel of a Committee of the College contrary to paragraph 45;

- c. failed to cooperate with an investigator of the College contrary to paragraph 50;
- d. engaged in conduct that members of the profession would reasonably regard as disgraceful, dishonourable or unprofessional conduct (paragraph 52); and
- e. engaged conduct unbecoming a dental hygienist (paragraph 53).

The findings were made in relation to the Registrant's failure to respond to the College's request for further information about criminal charges made against the Registrant, failure to comply with an order of the Inquiries, Complaints and Reports Committee ("ICRC") and to cooperate in an investigation with respect to same.

PRELIMINARY MATTERS

The Registrant requested that there be a publication ban and that the hearing be closed to the public. The Panel invited the Registrant and counsel for the College, Ms. Hountalas, to make submissions on the two issues, which they did. The Panel considered their respective submissions and was not satisfied that the test had been met to order either the publication ban or the exclusion of the public.

At the conclusion of the hearing, the Panel delivered its penalty order orally, with written reasons to follow.

COLLEGE SUBMISSIONS ON PENALTY AND COSTS

The College sought the revocation of the Registrant's certificate of registration. With respect to costs, the College asked that the Registrant pay costs in the amount of \$15,549.85, representing two-thirds of the College's actual costs.

The College submitted that although the Registrant's certificate of registration was currently revoked, it was revoked due to non-payment of fees which is an administrative revocation that could be reinstated through the payment of outstanding fees.

The College noted that an appropriate penalty should consider the four principles of sanctioning: specific deterrence, general deterrence, public confidence, and remediation. The College submitted that the Registrant's underlying conduct, non-compliance with the College's investigation, and failure to participate in the hearing on the merits demonstrated that the College's efforts to remediate the Registrant have been unsuccessful and that the only appropriate outcome is to revoke the Registrant's certificate of registration. Revocation, the College argued, would maintain the public's confidence in the profession's ability to self-regulate as well as serve as a deterrent to other members of the profession that a persistent disregard for one's regulator will not be tolerated. The College noted the following mitigating factors: this was the Registrant's first appearance before the Discipline Committee, the Registrant was present at the Penalty hearing, and there were significant personal circumstances that affected her

responsiveness to the College. The College pointed out that the Registrant's persistent disregard for the College's authority over an extended period of time and the Registrant's failure to complete remediation as ordered by the ICRC were aggravating factors. The College submitted that the Registrant's conduct demonstrated that she has effectively become ungovernable. In particular, the Registrant's conduct demonstrated a persistent disregard for the College's authority and public protection mandate over an extended period of time. Non-compliance with ICRC orders and failing to participate in an investigation is very serious because it frustrates the College's central mandate, which is to govern the profession in the public interest.

The College also provided case law in support of their position that the revocation was reasonable in light of the sentencing principles and nature of the conduct. These cases were:

- a. College of Dental Hygienists of Ontario v Allen, Discipline Committee (27 November 2014) ("Allen")
- b. Ontario (College of Dental Hygienists of Ontario) v Plasaj, 2016 ONCDHO 2 (CanLII) ("Plasaj")

With respect to costs, which was submitted as separate from penalty because it is not intended to be punitive, the College submitted evidence that its total costs and expenses were \$23,324.78. The College asked that the Panel order the Registrant to pay two-thirds of that amount: \$15,549.85. The College submitted that this was an appropriate case for the Panel to order the Registrant to pay costs. The College was entirely successful on the hearing on the merits and the Panel made findings of professional misconduct. The College also submitted that many of the costs were attributable to the Registrant because by failing to participate in the hearing process, the Registrant required the College to prove the allegations against her at a contested hearing by calling witness evidence. The College submitted that it was successful in doing so and, as such, it is therefore appropriate for the Registrant to pay a portion of the associated costs and not have them borne by the College's membership through its dues.

REGISTRANT SUBMISSIONS ON PENALTY AND COSTS

The Registrant did not tender documentary evidence or call witnesses in her submissions.

The Registrant submitted that she was unable to respond to the College on many occasions because of personal and financial circumstances that required her continuous attention. She explained that when she found out that she would need to complete a PROBE ethics course as part of an ICRC decision, she resigned from the College. The Registrant conveyed her dismay at continuing to receive communications from the College despite her resignation, expressed her desire to stop hearing from the College and admitted to ignoring some of the communications from the College. The Registrant expressed no desire to continue to practice dental hygiene and stated she only ever practiced for one day.

PENALTY DECISION

The Panel carefully considered the parties' submissions and the case law, and made the following order:

- a. The Registrar is directed to revoke the Registrant's certificate of registration immediately; and
- b. The Registrant is required to pay the College's costs in the amount of \$15,549.85, in monthly installments over fifteen (15) months, with the first payment being due thirty (30) days from the date of this Order. Payments one (1) to fourteen (14) shall be in the amount of \$1,000. Payment fifteen (15) shall be in the amount of \$1,549.85.

REASONS FOR DECISION ON PENALTY

The Panel found that the Registrant's failure to comply with a Committee order, respond to College communications, cooperate with a Committee, or engage in the liability portion of the hearing, demonstrated an outright disregard for her professional obligations to the College, which made her ungovernable.

The Panel identified several key facts in support of this conclusion. The Registrant demonstrated her ungovernability by failing to comply with a Specified Continuing Education or Remediation Program ordered by the College's ICRC in November 2018 and by repeatedly failing to respond to the College's subsequent investigation for non-compliance. The College tendered documentary evidence, which was marked as Exhibit 5, to show how many attempts were made to communicate with the Registrant, and by her own admission, she ignored many of the College's attempts at communication. These facts demonstrated the Registrant's total neglect of her duties and obligations to the College as a regulated health professional. The Registrant also submitted that she had no interest in being a member of the College and that she did not feel these proceedings were warranted, further demonstrating her unwillingness to be governed by the College.

Due to the Registrant's ungovernability, the Panel found that revocation was the only penalty that protected the public and achieved both general and specific deterrence. With reference to the misconduct proven in this case, the Panel found that the conduct was particularly concerning as compliance with one's regulator is required to ensure that members of the profession are competent and practising safely. Removal of the Registrant from the profession ensures that public safety is maintained as the College cannot otherwise ensure that the Registrant meets the requirements to practise safely.

Revocation also achieves general deterrence as it sends a clear message to the profession that ignoring College communications and complying with basic regulatory obligations, such as an ICRC Order, will result in serious consequences.

Revocation is the only effective means of ensuring specific deterrence given that the Registrant's ungovernability would render any remedial measures ineffective.

The Panel found that revocation was also proportionate to the severity of the misconduct and consistent with previous penalty decisions in cases involving similar findings. In *Allen*, the Discipline Committee found that revocation was an appropriate penalty for a registrant who did not comply with the requirements of the Quality Assurance program and then failed to cooperate with the subsequent investigation. In *Plasaj*, the registrant similarly failed to comply with the Quality Assurance program, failed to comply with the ICRC's subsequent direction and failed to participate in the investigation that resulted. In both cases, the registrants were found to be ungovernable, and the Discipline Committee determined that revocation was an appropriate penalty. Similar to the registrants in those cases, given the Registrant's lack of responsiveness, the repetitive character of the conduct, and her unwillingness to abide by the College's authority, revocation was, in the Panel's view, an appropriate penalty.

While the Panel considered the mitigating factors presented, these were outweighed by the aggravating factor of the conduct itself as it related to fulfillment of basic professional and ethical obligations such as responding to the College.

Section 53.1 of the Code gives the Panel the authority to make an order requiring a registrant to pay a portion of the costs incurred during the hearing and investigation process so that the full costs are not borne by the membership through their dues. The Panel found that two-thirds of the legal and hearing costs being sought by the College was reasonable. The College had provided evidence of the costs incurred. Further, the College had been entirely successful in proving all of the allegations of misconduct and the Registrant's non-participation necessitated a full day being spent on the liability portion of the hearing. In determining the payment schedule, the Panel considered, that the Registrant was present at the penalty hearing, and while there was no evidence provided, the Panel did consider the Registrant's submissions that she had difficult financial circumstances.

I, **Vanessa Pereira**, sign this Decision and Reasons for the Decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:

Vanessa Pereira, Chair, Professional Member

February 23, 2023

Date

Erin Betts, Public Member Meghan Leuprecht, Public Member Jacqueline White, Professional Member Mary Yeomans, Professional Member