

**June 16, 2022**

## **Panel Members:**

**Jennifer Cooper**, Chair, Professional Member of Council

**Loree Beniuk**, Public Member of Council

**Paula Malcomson**, Non-Council Committee Member

**Angelica Palantzas**, Public Member of Council

**Mary Yeomans**, Professional Member of Council

## **DECISION AND REASONS FOR DECISION**

- [1] A Panel of the Discipline Committee of the College of Dental Hygienists of Ontario (“the College”) heard this matter **via videoconference live broadcast in an accessible format over the Internet on June 16, 2022.**
- [2] The hearing was uncontested: It proceeded by way of an Agreed Statement of Facts and a Joint Submission on Penalty and Costs, which were jointly proposed by the counsel for the College and counsel for the Registrant.
- [3] At the conclusion of the hearing, the panel delivered its finding and penalty order orally and in writing, with written reasons to follow.

## **THE ALLEGATIONS**

- [4] The allegations of professional misconduct against Kelly Lourenco (Ms. Lourenco) were stated in the Notice of Hearing, dated July 14<sup>th</sup>, 2021, and are as follows:

### **The Registrant**

- 1. At the material times, Kelly Lourenco (the “Registrant”) was a duly registered member of the College of Dental Hygienists of Ontario (the “College”) in the general class.
- 2. At the material times, the Registrant was practising dental hygiene at a clinic in Toronto, Ontario.

### **False Records**

- 3. It is alleged that the Registrant made false chart entries for the purpose of hiding the fact that a colleague had been providing dental hygiene services to the colleague’s spouse.

### **False and Misleading Statements to the College Investigator**

- 4. On or about February 28, 2020 and/or April 14, 2020, the Registrant was interviewed by the College investigator in connection with a separate College investigation into her

colleague. It is alleged that the Registrant falsely told the College investigator one or more of the following:

- a. The Registrant had treated her colleague's spouse; and/or
- b. The Registrant never created and/or signed records for treatments she did not provide; and/or
- c. The chart entries described in paragraph 3 above were accurate.

[5] Professional Misconduct Alleged

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 2 (contravening a standard of practice of the profession or failing to maintain the standard of practice of the profession); and/or
- b. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1); and/or
- c. Paragraph 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations); and/or
- d. Paragraph 28 (falsifying a record relating to the member's practice); and/or
- e. Paragraph 30 (signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement; and/or
- f. Paragraph 32 (counselling or assisting in the submission of false or misleading accounts or charges to clients or in respect of their care); and/or
- g. Paragraph 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate); and/or
- h. Paragraph 52 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

[6] The College advised the panel that it was not proceeding with respect to the allegation that the Registrant provided false and misleading statements to the College investigator.

## **RESPONSE TO THE ALLEGATIONS**

- [7] The Registrant admitted to the allegations of professional misconduct as set out in the Agreed Statement of Facts.
- [8] The panel conducted a plea inquiry and was satisfied that the Registrant's admissions were voluntary and informed.

## **THE AGREED STATEMENT OF FACTS**

- [9] The Agreed Statement of Facts, which was filed as an exhibit, provides as follows:

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee of the College of Dental Hygienists of Ontario (the "Discipline Committee"):

### **The Registrant**

- 1. At the material times, Kelly Lourenco ("the Registrant") was a duly registered member of the College of Dental Hygienists of Ontario (the "College").
- 2. At the material times, the Registrant was practising dental hygiene at a clinic in Toronto, Ontario.
- 3. The Registrant has no prior complaint or discipline history with the College.

### **False Records**

- 4. It is agreed that on March 11, March 24, July 7, 2018, and January 30, 2019, the Registrant made false chart entries in a client's health record for the purpose of hiding the fact that a colleague had been providing dental hygiene services to the client, who was the colleague's spouse.
- 5. In particular, it is agreed that the Registrant falsely indicated that she had provided treatment to the client on those dates when, in fact, the client was treated by the Registrant's colleague.
- 6. It is agreed that the Registrant's conduct was contrary to the College's Standards of Practice, in particular Standard I. Professionalism and Standard II. Professional Practice.
- 7. It is further agreed that the Registrant was in a conflict of interest given that her professional and ethical duty to the client was influenced by the furthering of the personal interests of the Registrant's colleague.

### **Admission of Professional Misconduct**

8. It is agreed that the conduct set out at paragraphs 1-5 above (the "Agreed Facts") constitutes professional misconduct pursuant to clause 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the "Code") and the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991 (the "Act"):
- a. Paragraph 2 (contravening a standard of practice of the profession or failing to maintain the standard of practice of the profession);
  - b. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 of O Reg 281.94 under the Act);
  - c. Paragraph 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations);
  - d. Paragraph 28 (falsifying a record relating to the member's practice);
  - e. Paragraph 30 (signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement);
  - f. Paragraph 32 (counselling or assisting in the submission of false or misleading accounts or charges to clients or in respect of their care); and
  - g. Paragraph 52 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

### **FINDING**

[10] The panel accepted as true the facts set out in the Agreed Statement of Facts and finds that the Registrant committed professional misconduct pursuant to paragraphs **2, 12, 27, 28, 30, 32 and 52** of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991* with respect to the facts and admissions set out in the Agreed Statement of Facts.

### **JOINT SUBMISSION ON ORDER AND COSTS**

[11] The parties filed a Joint Submission on Penalty and Costs with respect to the appropriate

Order in this case, which was filed as an exhibit, and which provides as follows:

1. The Registrant is required to appear, by electronic means, before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College;
2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of two (2) months, commencing on the date of the Discipline Committee's order;
3. The Registrant is required to successfully complete an individualized ethics course, pre-approved by the Registrar and at the Registrant's expense, within six (6) months of the date of the Discipline Committee's order; and
4. The Registrant is required to pay the College's costs in the amount of \$5,000.00 in six (6) monthly installments, with payments one (1) to five (5) in the amount \$833.30 each and payment six (6) in the amount of \$833.50, and with the first installment due within thirty (30) days of the date of the Discipline Committee's order.

#### **SUBMISSIONS OF THE PARTIES**

- [12] The College and the Registrant made submissions to the panel with respect to why the joint submission was appropriate and should be accepted.
- [13] Counsel for the College submitted that the proposed penalty and costs were appropriate under the circumstances and with regard to the legal principles relevant to setting an order. Specifically, mitigating factors include: the Registrant has no previous discipline history and the Registrant reached an agreement with the College on the proposed order. The nature of the Registrant's misconduct was an aggravating factor.
- [14] Counsel for the Registrant agreed that the proposed penalty and costs were appropriate under the circumstances. The penalty and costs will maintain public confidence in the profession and are proportional to the severity of the misconduct. The proposed remediation will ensure that the Registrant is made fully aware of the severity and consequences of these incidents, to the Registrant, the College and the profession.
- [15] Counsel stated that the costs are not meant to be punitive but are instead meant to recover part of the costs incurred by the College in pursuing this matter so that the entire financial burden is not left to members of the College. Costs also reflect the fact that the Registrant agreed to the Joint Statement of Facts.
- [16] The College also provided the panel with copies of the following discipline cases:
- a. College of Early Childhood Educators v Ashley Morrison, 2017 ONCECE 7.

- b. College of Nurses of Ontario v Edwena Nolan (Discipline Committee, May 2006).
- c. Ontario (College of Massage Therapists of Ontario) v Di Sun, 2017 ONCMTO 18.
- d. College of Dental Hygienists of Ontario v Elizabeth Diego (Discipline Committee, February 2022).
- e. Timothy Edward Bradley v. Ontario College of Teachers, 2021 ONSC 2303 (Div Ct).

### **THE PANEL'S ORDER**

[17] After carefully considering the joint submission, the legal precedents cited, and the oral submissions made by counsel for the College and counsel for the Registrant, the panel accepted the joint submission and makes the following order:

1. The Registrant is required to appear, by electronic means, before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College;
2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of two (2) months, commencing on the date of the Discipline Committee's order;
3. The Registrant is required to successfully complete an individualized ethics course, pre-approved by the Registrar and at the Registrant's expense, within six (6) months of the date of the Discipline Committee's order; and
4. The Registrant is required to pay the College's costs in the amount of \$5,000.00 in six (6) monthly installments, with payments one (1) to five (5) in the amount \$833.30 each and payment six (6) in the amount of \$833.50, and with the first installment due within thirty (30) days of the date of the Discipline Committee's order.

### **REASONS FOR DECISION ON ORDER**

[18] The panel understands its legal obligation to accept a joint submission unless doing so would be contrary to the public interest or bring the administration of the disciplinary process into dispute.

[19] The panel considered the terms of the proposed order and concluded that, together, they meet the needs of this case and address the legal principles relevant to setting an order.

[20] The panel weighed these principles, taking into account the facts and circumstances of this case, when deciding whether to accept the joint submission. The panel also considered the aggravating and mitigating factors referred to in the joint submission and by the parties.

[21] Specifically, the panel considered the following mitigating factors

- The history of the Registrant
- The cooperation of the Registrant
- The fact that the Registrant agreed to the Joint Statement of Facts

[22] The panel also considered the following aggravating factors

- The length of time over which the incidents occurred
- The deliberate actions of the incidents

[23] Ultimately, the panel was of the opinion that the order appropriately addresses the principles of public protection, general deterrence and specific deterrence.

[24] Ultimately, the panel was of the opinion that the order appropriately addresses the principles of public protection, general deterrence and specific deterrence. The principle of specific deterrence is served in this case by the two-month suspension, reprimand, and the terms, conditions or limitations on the Registrant's certificate of registration. These aim to ensure that this conduct will not be repeated, but also serve to protect the public and instill public confidence in the profession. Moreover, these same elements serve as general deterrence because it communicates to the profession that such misconduct will not be tolerated, and the Discipline committee will seek to deter members from engaging in conduct that disregards the College's public protection mandate. Also, because this decision will be published on the College's website, other registrants will be aware of the consequences of this type of professional misconduct. The principle of rehabilitation will be realized by the Registrant's successful completion of the individualized ethics course, which serves to remediate the Registrant so that she has the requisite knowledge to practice safely and ethically.

[25] At the conclusion of the hearing, the Registrant waived her right of appeal and the reprimand was administered by the panel.

I, Jennifer Cooper, sign this Decision and Reasons for Decision as Chair and on behalf of the panel members listed below.

Dated at Toronto, this 7 of July 2022.





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Jennifer Cooper, Chair, Professional Member of Council

**Discipline Panel Members:**

**Loree Beniuk**, Public Member of Council

**Paula Malcomson**, Non-Council Committee Member

**Angelica Palantzas**, Public Member of Council

**Mary Yeomans**, Professional Member of Council

## **Summary of Reprimand Issued by Discipline Committee to Kelly Lourenco on June 16, 2022**

As part of our penalty order this Discipline Panel has ordered that you be given an oral reprimand.

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 professional misconduct in the following ways as per the agreed statement of facts:

- a. Paragraph 2 (contravening a standard of practice of the profession or failing to maintain the standard of practice of the profession);
- b. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 of O Reg 281.94 under the Act);
- c. Paragraph 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations);
- d. Paragraph 28 (falsifying a record relating to the member's practice);
- e. Paragraph 30 (signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement);
- f. Paragraph 32 (counselling or assisting in the submission of false or misleading accounts or charges to clients or in respect of their care); and
- g. Paragraph 52 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

It is clear to the Panel, that you have not upheld your professional commitment to:

- be a positive reflection of the profession
- conduct yourself in a manner that is honourable, professional and becoming of a registrant of this College
- abide by the laws, rules, guidelines and requirements of the College
- comply with the standards expected of our profession

Of particular concern is that

- the professional misconduct in which you engaged has put at risk the public's confidence in the profession's ability to govern itself and erodes the profile of this profession in the minds of the public and other regulated health care professionals.

- Your failure to adhere to the College's standard of practice impacts the public's confidence in the profession

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

The Panel acknowledges that you took responsibility for your actions and admitted to the allegations in the Notice of Hearing. However, your actions were inappropriate.

- The Panel would like to remind you that being a registered dental hygienist is a privilege and not a right. The Panel is satisfied that by completing the course work and remediation ordered you will be able to return to the profession and practice safely within the Province of Ontario.
- We trust that we will not see you before us again.

This concludes our reprimand.