

**DISCIPLINE COMMITTEE OF THE  
COLLEGE OF DENTAL HYGIENISTS OF ONTARIO**

**PANEL:** Erin Betts, Chair of the Panel, a public member,  
Michelle Atkinson, a professional member,  
Loree Beniuk, a public member,  
Jennifer Cooper, a professional member, and  
Gillian Dunn, a professional member.

**BETWEEN:**

**College of Dental Hygienists of Ontario**

)Bernard LeBlanc for the  
)College of Dental Hygienists of  
)Ontario  
)  
)  
)  
)

**- and -**

**Elizabeth Diego**

)Lindsay Kantor for the  
)Registrant, Elizabeth Diego  
)  
)  
)Josh Koziembrocki, Independent  
)Legal Counsel  
)  
)  
) Heard: February 2, 2022

## **DECISION AND REASONS FOR DECISION**

1. A panel of the Discipline Committee of the College of Dental Hygienists of Ontario ("the Panel") heard this matter virtually by Zoom videoconference on February 2, 2022.
2. The hearing proceeded by way of a Statement of Facts, Admission of Professional Misconduct and Plea of No Contest, and a Joint Submission on Penalty and Costs, which were jointly proposed by counsel for the College of Dental Hygienists of Ontario ("the College") and counsel for the Registrant, Elizabeth Diego (the "Registrant").
3. At the conclusion of the hearing, the Panel delivered its finding and penalty order orally, with written reasons to follow. These are the reasons.

### The Allegations

4. The allegations of professional misconduct against the Registrant were listed in the Notice of Hearing, dated November 20, 2020, which was filed as Exhibit #1, and read as follows:

1. Ms. Elizabeth Diego (the "Registrant") is a duly registered member of the College of Dental Hygienists of Ontario (the "College") practising at a clinic in Toronto, Ontario.

#### **Treatment of Spouse**

2. It is alleged that from in or about 2003 to in or about 2019 the Registrant provided dental hygiene treatment to her spouse.
3. From in or about July 2010, the College has regularly advised Registrants that they are not permitted to treat their spouses.

#### **False Records**

4. It is alleged that the Registrant made false chart entries, and/or has asked other staff at the clinic to make false entries, for the purpose of hiding the fact that the Registrant has been providing dental hygiene to her spouse.
5. It is alleged that the Registrant falsified billing information to show that colleagues treated the Registrant's spouse when it was really the Registrant who provided the treatment to him.

### **Refusal to Comply with Summons**

6. The investigator made numerous attempts in 2020 to interview the Registrant including issuing a summons to her pursuant to the authority under the Public Inquiries Act, 2009 and section 76 of the Health Professions Procedural Code (“Code”), being Schedule 2 to the Regulated Health Professions Act, 1991. Contrary to her legal obligations under these provisions, the Registrant has refused to participate in an interview with the investigator.

### **Professional Misconduct Alleged**

7. It is alleged that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the Code and as defined in one or more of the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991: 5

- i. Paragraph 2 (contravening or failing to maintain a standard of practice of the profession); and/or
- ii. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94); and/or
- iii. Paragraph 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations); and/or
- iv. Paragraph 28 (falsifying a record relating to the member’s practice); and/or
- v. 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
- vi. Paragraph 32 (counselling or assisting the submission of false or misleading accounts or charges to clients or in respect of their care); and/or
- vii. 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
- viii. Paragraph 50 (failure to cooperate with an investigator); and/or
- ix. Paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or
- x. Paragraph 53 (conduct unbecoming a dental hygienist).

Statement of Facts, Admission of Professional Misconduct and Plea of No Contest

5. Counsel for the College advised the Panel that the evidence would be provided by way of a Statement of Facts, Admission of Professional Misconduct and Plea of No Contest, which was filed as Exhibit #2 (“Exhibit 2”). Exhibit 2 provides as follows:

**The Registrant**

1. Elizabeth Diego (the “Registrant”) was at all material times a duly registered member of the College of Dental Hygienists of Ontario (the “College”) practising at a clinic in Toronto, Ontario.

**Treatment of Spouse**

2. Between 2003 and 2019 (the “Relevant Period”), the Registrant provided dental hygiene treatment to her spouse (“Mr. Diego”).
3. From in or around July 2010, the College has regularly advised registrants that they are not permitted to treat their spouses.
4. Registrants of the College must ensure that positive and professional relationships are established and maintained with clients by recognizing and avoiding conflicts of interest, as stipulated in the CDHO Dental Hygiene Standards of Practice. Attached as Tab “A” is an excerpt of the relevant Standard.
5. The Registrant thereby engaged in professional misconduct within the meaning of clause 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the “Code”) and specifically within the meaning of paragraphs 2 (contravening or failing to maintain a standard of practice of the profession); 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 of Ontario Regulation 218/94 made under the Dental Hygiene Act, 1991 (the “Regulation”), in particular section 14.1 of the Regulation); and 52 (disgraceful, dishonourable or unprofessional conduct) of section 15 of the Regulation.

**Refusal to Comply with Summons**

6. The College investigator made numerous attempts in 2020 to interview the Registrant, including issuing a summons to her pursuant to the authority under the Public Inquiries Act, 2009 and section 76 of the Code. Attached as Tab “B” is a copy of the summons issued to the Registrant on April 23, 2020.

7. Contrary to her legal obligations under the provisions outlined in paragraph 6 (excerpts of which are attached as Tab “C”), the Registrant refused to participate in an interview with the College investigator on the basis of legal advice which had been provided to her.
8. The Registrant thereby engaged in professional misconduct within the meaning of clause 51(1)(c) of the Code and specifically within the meaning of paragraphs 2 (contravening or failing to maintain a standard of practice of the profession); 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate); 50 (failing to cooperate with an investigator of the College); 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); and 53 (engaging in conduct unbecoming a dental hygienist) of section 15 of the Regulation.
9. The Registrant admits to the truth of the facts referred to in paragraphs 1 to 4 and 6 to 7 above (the “Agreed Facts”).

**Plea of No Contest – False Records**

10. The Registrant does not contest that the Discipline Committee can accept as correct the facts referred to in paragraphs 11 and 12 below (the “Uncontested Facts”), for the purposes of this proceeding only.
11. Mr. Diego’s chart from the Relevant Period contains chart entries and billing entries that suggest that Mr. Diego was treated by other practitioners at the same clinic as Ms. Diego (the “Other Practitioners”). However, daily schedules and/or time sheets suggest that the Other Practitioners were either treating other patients or were not treating patients at all at the time(s) during which Mr. Diego’s records suggest he was receiving treatment from them.
12. The Registrant also accepts that, were this matter to proceed to a contested hearing, various witnesses would testify that the Registrant made false chart entries in Mr. Diego’s chart and asked other staff at the clinic to make false entries in Mr. Diego’s chart and to falsify billing information for the purpose of hiding the fact that the Registrant had been providing dental hygiene services to her spouse.
13. The Registrant understands that the Discipline Committee can accept the Uncontested Facts as a sufficient basis to making findings of professional misconduct within the meaning of clause 51(1)(c) of the Code and specifically within the meaning of paragraphs 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations); 28 (falsifying a record relating to the member’s practice); 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); 32 (counselling or assisting the submission of false or misleading accounts or charges to clients or in respect of their care); and 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) of section 15 of the Regulation.
14. By this document, the Registrant states that:

- a) she understands fully the nature of the allegations against her;
  - b) she understands that by admitting or pleading no contest to the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
  - c) she understands that any agreement between her and the College with respect to penalty does not bind the Discipline Committee;
  - d) she understands that the decision of the Committee and a summary of its reasons including reference to her name will be published in the College's annual report and may be reported in the College's publication Milestones and the website of the College; and
  - e) she is executing this document voluntarily and after receiving, or having had the opportunity to receive, legal advice.
15. In light of the Agreed Facts, admissions of professional misconduct, Uncontested Facts and plea of no contest, the College and the Registrant submit that the Discipline Committee should find that the Registrant has committed professional misconduct as set out above.

### Registrant's Plea

6. The Registrant admitted the following allegations of professional misconduct in the Notice of Hearing:
- i. Paragraph 2 (contravening or failing to maintain a standard of practice of the profession);
  - ii. Paragraph 12 (acting in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94);
  - vii. Paragraph 42 (failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate);
  - viii. Paragraph 50 (failure to cooperate with an investigator);
  - ix. Paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and
  - x. Paragraph 53 (conduct unbecoming a dental hygienist).
7. The Registrant pleaded no contest to the following allegations of professional misconduct in the Notice of Hearing:

iii. Paragraph 27 (failing to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations);

iv. Paragraph 28 (falsifying a record relating to the member's practice);

v. 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

vi. Paragraph 32 (counselling or assisting the submission of false or misleading accounts or charges to clients or in respect of their care).

8. The Panel conducted an oral plea inquiry and was satisfied that the Registrant's plea was voluntary, informed, and unequivocal.

#### Submissions of the Parties on Finding

9. Mr. LeBlanc, counsel for the College, referred the Panel to the following authorities in the Book of Authorities (Merits) of the College of Dental Hygienists of Ontario ("BOA Merits"):
1. Excerpts from the *Regulated Health Professions Act, 1991*;
  2. Excerpts from the *Statutory Powers Procedure Act, 1990*;
  3. *Timothy Edward Bradley v Ontario College of Teachers*, 2021 ONSC 2303;
  4. *Ontario (College of Physicians and Surgeons of Ontario) v Joffe* , 2009 ONCPSD 4;
  5. *Ontario College of Teachers v Wells* , 2008 ONOCT 66 (CanLII).
10. Counsel for the College submitted that the agreed facts, admissions and plea of no contest support a finding of professional misconduct against the Registrant as set out in the Notice of Hearing.

11. Ms. Kantor, counsel for the Registrant, similarly submitted that the agreed facts, admissions, and plea of no contest support a finding of professional misconduct as set out in the Notice of Hearing.

#### Decision on Finding

12. The Panel considered the authorities referred to in the BOA Merits, the Registrant's plea, the Exhibits filed, and rendered an oral decision on February 2, 2022. The Panel found that the facts support a finding of professional misconduct. In particular, the Panel finds that the Registrant is guilty of professional misconduct in that she:
  - i. contravened or failed to maintain a standard of practice of the profession; and/or
  - ii. acted in a professional capacity while in a conflict of interest as described in Part IV.1 and in particular section 14.1 of O. Reg. 218/94; and/or
  - iii. failed to keep records in accordance with generally accepted standards of practice or as required by any applicable regulations; and/or
  - iv. falsified a record relating to the member's practice; and/or
  - v. signed or issued, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement; and/or
  - vi. counselled or assisted in the submission of false or misleading accounts or charges to clients or in respect of their care; and/or
  - vii. failed to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate; and/or
  - viii. failed to cooperate with an investigator; and/or
  - ix. engaged in disgraceful, dishonourable or unprofessional conduct; and/or
  - x. engaged in conduct unbecoming a dental hygienist.



Reasons for Decision on Finding

13. The Panel accepted the Registrant's admissions, plea of no contest and the facts contained in the *Statement of Facts, Admissions of Professional Misconduct and Plea of No Contest*.
14. The Panel is satisfied that the conduct described in Exhibit 2 constitutes professional misconduct as set out in paragraph 12, above, for the following reasons:
  - a. The Registrant admitted that between 2003 and 2019 ("Relevant Period"), she provided dental hygiene treatment to her spouse, Mr. Diego, and from in or around July 2010, the College has regularly advised registrants that they are not permitted to treat their spouses. Registrants of the College must ensure that positive and professional relationships are established and maintained with clients by recognizing and avoiding conflicts of interest, as stipulated in the CDHO Dental Hygiene Standards of Practice.
  - b. The Registrant admitted that the College investigator made numerous attempts in 2020 to interview the Registrant, including issuing a summons to her pursuant to the authority under the *Public Inquiries Act*, 2009 and section 76 of the Code. Contrary to her legal obligations, the Registrant refused to participate in an interview with the College investigator on the basis of legal advice which had been provided to her.
  - c. The Registrant did not contest that Mr. Diego's chart from the Relevant Period contains chart entries and billing entries that suggest that Mr. Diego was treated by other practitioners at the same clinic as Ms. Diego (the "Other Practitioners"). However, daily schedules and/or time sheets suggest that the Other Practitioners were either treating other patients or

were not treating patients at all at the time(s) during which Mr. Diego's records suggest he was receiving treatment from them.

- d. The Registrant also accepted that, were this matter to proceed to a contested hearing, various witnesses would testify that the Registrant made false chart entries in Mr. Diego's chart and asked other staff at the clinic to make false entries in Mr. Diego's chart and to falsify billing information for the purpose of hiding the fact that the Registrant had been providing dental hygiene services to her spouse.

### Penalty

#### *Joint Submission on Penalty and Costs*

15. The parties submitted a Joint Submission on Penalty and Costs ("JSPC") with respect to the appropriate order in this case, 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 a summary 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 five (5) months, commencing on the date of the Discipline Committee's order.
  3. The Registrar is directed to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
    - a. Requiring the Registrant to successfully complete (i.e., unconditionally pass), at her own expense, the PROBE Ethics & Boundaries Course, within six (6) months of the date of the Discipline Committee's order.
  4. The Registrant is required to pay to the College costs in the amount of \$5,000.00 within six (6) months of the date of the Discipline Committee's order.

#### *Submissions on Penalty and Costs*

16. The College made submissions to the Panel with respect to why the JSPC was appropriate and should be accepted.

17. Counsel for the College submitted that the penalty will protect the public and serve as a deterrent for the Registrant and for other members of the College. He also submitted that the proposed order has a component of remediation, and that it will protect the public.
18. Mr. LeBlanc submitted that a mitigating factor is that the Registrant made several admissions and pleaded no contest and by doing so she saved the College the time and cost of a contested hearing.
19. Ms Kantor, counsel for the Registrant, submitted that a mitigating factor is that the Registrant has no previous Discipline history before the CDHO.
20. The College provided the Panel with a Brief of Authorities (Penalty and Costs) of the College of Dental Hygienists of Ontario ("BOA Penalty and Costs") containing the following cases for the Panel's consideration:
  1. *College of Dental Hygienists of Ontario v. Boodoo-Cutbush* (Discipline Committee, 4 January 2021).
  2. *College of Dental Hygienists of Ontario v Chuback* (Discipline Committee, 6 January 2022).
  3. *Ontario (College of Physicians and Surgeons of Ontario) v. Irvine*, 2011 ONCPSD 39.
  4. *Ontario (College of Physiotherapists of Ontario v Poling*, 2020 CanLII 50743
21. The Panel received and accepted the advice of Independent Legal Counsel that it is under a legal obligation to accept a jointly proposed penalty order unless the Panel finds that it is contrary to the public interest and/or would bring the administration of justice into disrepute.

### Penalty Decision

22. The Panel considered the JSPC, the cases provided, and the oral submissions of the counsel for each of the parties.
23. The Panel also considered the terms of the proposed order and concluded that the proposed order met the needs of this case and addressed the legal principles relevant to making a penalty order.
24. Accordingly, in an oral decision delivered on February 2, 2022, the Panel accepted the joint submission and made the following order (the "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 a summary 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 five (5) months, commencing on the date of the Discipline Committee's order.
  3. The Registrar is directed to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
    - a. Requiring the Registrant to successfully complete (i.e., unconditionally pass), at her own expense, the PROBE Ethics & Boundaries Course, within six (6) months of the date of the Discipline Committee's order.
  4. The Registrant is required to pay to the College costs in the amount of \$5,000.00 within six (6) months of the date of the Discipline Committee's order.

### *Reasons for Decision on Penalty*

25. In reaching its decision, the Panel considered the fact that the parties made a joint submission to the Panel regarding the penalty in this case. The Panel recognizes that although it has discretion to accept or reject a joint submission on penalty, the Panel understands its obligation to accept a joint submission unless doing so would bring the

administration of justice into disrepute and/or would otherwise be contrary to the public interest.

26. In this case, the Panel concluded that the proposed penalty was in the public interest and should be accepted.
27. The Panel weighed the principles relevant to the imposition of an appropriate order in disciplinary proceedings including: the protection of the public; maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it applies to the membership as a whole; specific deterrence as it applies to the particular Registrant; and the potential for the Registrant's rehabilitation.
28. The Panel considered the aggravating and mitigating factors. An aggravating factor in this case is the fact that the conduct spanned several areas. The mitigating factors include the following:
  1. the Registrant made admissions to certain allegations and entered a plea of no contest to others, saving the College the time and money of a contested hearing; and
  2. the Registrant does not have a prior record of professional misconduct.
29. After considering the issues, above, the Panel was of the opinion that the Order sought appropriately addresses the principles of public protection, maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence and specific deterrence, and rehabilitation.
30. At the conclusion of the hearing, the Registrant waived her right of appeal and the reprimand was administered orally by the Chair of the Panel.

I, **Erin Betts**, 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:



June 2, 2022

---

**Erin Betts**  
Chair, Discipline Panel

---

Date

**Michelle Atkinson, a professional member,  
Loree Beniuk, a public member,  
Jennifer Cooper, a professional member, and  
Gillian Dunn, a professional member.**