

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

BETWEEN:

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

- and -

ZOE MCINTOSH

PANEL MEMBERS:

Maheen Cassim	Professional Member, Panel Chair
Amanda Acker	Professional Member
Mary Yeomans	Professional Member
Martin Iyamabo	Public Member

COUNSEL:

Ahmad Mozaffari	for the College of Dental Hygienists of Ontario
Elyse Sunshine	Independent Legal Counsel

HEARD: March 5, 2024

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 March 5, 2024.

Ms. McIntosh (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 videoconference 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 23, 2023, which was filed as Exhibit #1, and read as follows:

1. The Registrant was 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”).

Failure to Comply with the Requirements of the Quality Assurance Program

2. Members of the College in the General Class are required to comply with the requirements of the College’s Quality Assurance Program. Those requirements include providing the College with Quality Assurance records upon request and participating in peer and practice assessments when directed to do so.
3. On or about January 25, 2020, the Registrant was given notice that she was selected to undergo a Quality Assurance Records Audit (peer and practice assessment). The Registrant was directed to submit her Quality Assurance records for the peer and practice assessment to the College by January 31, 2021.
4. The Registrant failed to provide the College with the Quality Assurance records by January 31, 2021.
5. The Registrant was provided several extensions, the latest being February 26, 2021. The Registrant failed to provide the College with the Quality Assurance records it requested by the February 26, 2021, deadline.
6. On or about March 4, 2021, the College wrote to the Registrant and notified her that in light of her failure to submit the requested records, the Quality Assurance Committee (“QAC”) was requiring her to successfully complete the College’s Quality Assurance Written Assessment and to participate in an onsite practice assessment. The Registrant was given a deadline of April 4, 2021, to complete the Written Assessment and to contact the College to make arrangements for the practice assessment.
7. The Registrant failed to contact the College or to complete the Quality Assurance Written Assessment by the April 4, 2021, deadline.
8. On or about May 27, 2021, the College wrote to the Registrant and requested that she contact the Quality Assurance Manager to confirm her contact information by June 27, 2021. The College further directed the Registrant to make arrangements to satisfy her

outstanding Quality Assurance requirements, including completing the Written Assessment and participating in an onsite practice review.

9. The Registrant failed to contact the Quality Assurance Manager by June 27, 2021.
10. The Registrant contacted the College in or around July 11, 2021, and asked the College what she needed to complete to address her non-compliance with the College's Quality Assurance requirements. The Registrant was directed to complete the Written Assessment and to enroll for and complete the Clinical Competency Evaluation (the "Evaluation"). The Registrant was directed to complete the Written Assessment by August 12, 2021, and was asked to provide information to the College to secure her space in the Evaluation by September 10, 2021.
11. The Registrant failed to provide the requisite information to secure her space in the Evaluation by September 10, 2021.
12. On or about October 28, 2021, the College wrote to the Registrant and repeated its request that she submit documentation required to secure a space in the Evaluation, this time by November 11, 2021. The Registrant was advised that if the College did not receive the required documentation by the deadline, the QAC would consider further action, including a referral for professional misconduct to the Inquiries, Complaints and Reports Committee ("ICRC") of the College.
13. The Registrant failed to provide the requisite documentation by the November 11, 2021, deadline imposed by the College.
14. On or about December 20, 2021, the College wrote to the Registrant and repeated its request that the Registrant provide the necessary documentation to participate in the Evaluation, this time by December 31, 2021. The College further stated that it expected the Registrant to participate in the Evaluation no later than January 31, 2022.
15. The Registrant did not provide the requisite documentation by the December 31, 2021 deadline and did not participate in the Evaluation by January 31, 2022.
16. On or about February 11, 2022, the Registrant's certificate of registration was suspended for non-payment of fees. On or about August 17, 2022, the Registrant reinstated her certificate of registration.
17. On or about August 26, 2022, the College wrote to the Registrant regarding her outstanding Quality Assurance requirements and reminded the Registrant that she had yet to complete the Evaluation.

18. On or about September 15, 2022, the College wrote to the Registrant and repeated its request that the Registrant provide the outstanding documentation required to participate in the Evaluation, this time by October 15, 2022. The Registrant was further advised that following the submission of documentation, the Registrant was expected to make arrangements to participate in the Evaluation by November 15, 2022.
19. The Registrant failed to provide the required documentation by October 15, 2022.
20. On or about October 17, 2022, the College wrote to the Registrant and repeated its request for outstanding documentation by October 31, 2022.
21. On or about October 20, 2022, the Registrant submitted some, but not all, of the required documentation.
22. On or about November 18, 2022, the College wrote to the Registrant and repeated its request that she submit the outstanding documentation, this time by November 25, 2022. It also required the Registrant to make arrangements to participate in the Evaluation by December 31, 2022. The Registrant was advised that it was the QAC's intention to refer allegations against her to the ICRC if the deadlines set in its November 18, 2022, correspondence were not met.
23. The Registrant failed to submit the outstanding documentation and failed to make arrangements to participate in the Evaluation.
24. By letter dated January 20, 2023, the Registrant was advised that the QAC had referred allegations of professional misconduct against the Registrant to the ICRC with respect to her failure to comply with an order or direction of a Committee of the College.

Failing to Cooperate with College Investigation

25. During the College's investigation, the Registrant failed to respond to the investigator and failed to attend for an interview with the investigator.
26. The Registrant failed to respond to a written inquiry dated August 29, 2023, sent on behalf of a panel of the ICRC, by the date specified for response.

Professional Misconduct Alleged

27. It is alleged that the above conduct constitutes professional misconduct pursuant to Clause 51(1)(b.0.1) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the "Code") (failing to cooperate with the QAC or any assessor appointed by that Committee).

28. It is alleged that the above conduct constitutes professional misconduct pursuant to Clause 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 made under the *Dental Hygiene Act, 1991* (the "Act"):

- a. Paragraph 43 (failing to reply appropriately and responsively within the time specified by the request, or if no time is specified, within 30 days to a written inquiry made by the College that requests a response); 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, upon production by the investigator of their appointment under section 75 of the Code); and/or
- d. 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); 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 Terri-Lynn Macartney

At the time of the hearing, Terri-Lynn Macartney ("Ms. Macartney") was the Manager of the Quality Assurance Program at the College and had served in this role since 2019. She testified that all registrants of the College are required to maintain records of quality assurance activities and to submit them to the College when requested and to participate in a peer and practice assessment.

Ms. Macartney explained that on January 25, 2020, the Registrant was notified that she had been selected to undergo a peer and practice assessment. The Registrant was advised that she was required to submit records for assessment by January 31, 2021. She did not do so. Ms. Macartney emailed the Registrant on February 23, 2021, giving her a new February 26, 2021, deadline to submit her records. She did not do so.

By letter dated March 4, 2021, Ms. Macartney advised the Registrant that the College had still not received her records. As a result, the Registrant was required to complete a Quality Assurance Written Assessment (the "QA Test") and participate in an onsite practice assessment. The Registrant was required to complete the QA Test and make arrangements for the onsite assessment by April 4, 2021. She did not meet this deadline.

Ms. Macartney testified that the College's Registrar wrote to the Registrant on May 27, 2021, about her failure to meet her Quality Assurance requirements. The Registrant was advised, among other things, that the QAC had asked to her impose an administrative fee of \$50 because of the delay. The Registrant was given notice of the fee and 30 days to pay and to contact Ms. Macartney. The Registrant did not respond by the June 2021 deadline.

By email dated July 11, 2021, the Registrant contacted Ms. Macartney and confirmed that she had paid the fee and that she had not been practicing and was reaching out to figure out the next steps. Ms. Macartney responded the following day outlining the steps that needed to be taken by the Registrant and asking for more information regarding the Registrant's employment status (because she was not practicing, she would have to complete the Evaluation instead of an onsite assessment). Ms. Macartney gave the Registrant a deadline of August 12, 2021, to complete all the required steps.

The Registrant did not meet the deadline but did complete the QA Test. Ms. Macartney wrote to the Registrant on August 17, 2021, about the arrangements for the Registrant's Evaluation on September 17, 2021, and to advise her about the documents that needed to be submitted by September 10, 2021.

The Registrant did not provide the documents by September 10th as required. By email dated September 12, 2021, the Registrant advised that she had been sick and asked for an extension to complete the Evaluation. By responding to an email dated September 13, 2021, Ms. Macartney asked for additional information and for the Registrant to complete an extension request form. The Registrant did not respond or complete the form.

By correspondence dated October 28, 2021, delivered to the Registrant, Ms. Macartney reiterated the Registrant's outstanding Quality Assurance requirements and requested that the Registrant provide the information by November 11, 2021. Ms. Macartney confirmed that this was a direction from the QAC and that a failure to abide by such a direction could result in consequences, including a referral of allegations of professional misconduct to the Discipline Committee. No response was received from the Registrant.

On December 20, 2021, Ms. Macartney communicated to the Registrant that the QAC had met to consider the matter and was requesting that the Registrant submit the required documents by December 31, 2021, and participate in the Evaluation on January 31, 2022. Ms. Macartney also communicated the consequences that could occur from the Registrant's continued failure to comply, including a referral to the Discipline Committee. The Registrant did not meet the deadlines imposed by the QAC.

On February 11, 2022, the Registrant's registration with the College was suspended for non-payment of fees.

On August 17, 2022, the Registrant's registration with the College was reinstated. By email dated August 26, 2022, Ms. Macartney reminded the Registrant of her outstanding Quality Assurance requirements and advised her that the QAC would be considered the matter and if she wished to add anything to her file for consideration, she should do so by August 31, 2022. The Registrant did not respond.

By letter dated Sept 15, 2022, Ms. Macartney advised the Registrant that the QAC was requesting the outstanding documentation by October 15, 2022, and required the Registrant to participate in the Evaluation by November 15, 2022.

As the Registrant did not submit the outstanding documentation, Ms. Macartney sent the Registrant a letter on October 17, 2022, asking that it be submitted by October 31, 2022.

By letter dated November 18, 2022, Ms. Macartney advised the Registrant that not all of the requested documents had been received, specifically, an N95 fit test certificate. She advised the Registrant to submit it by November 25, 2022, and to make arrangements to participate in the Evaluation by December 31, 2022, failing which the matter would be referred to the ICRC. No response was received. Ms. Macartney sent a further letter to the Registrant on November 25, 2022, asking for the documentation by December 5, 2022.

As no response was received from the Registrant, on January 20, 2023, Ms. Macartney advised the Registrant that the QAC had referred the matter to the ICRC because of concerns that the Registrant had engaged in professional misconduct.

Evidence of Roula Anastasopoulos

At the time of the hearing, Roula Anastasopoulos ("Ms. Anastasopoulos") was an Investigator at the College, appointed on February 6, 2023, pursuant to section 75 of the Code to investigate the Registrant's non-compliance with the QAC.

As part of her investigation, Ms. Anastasopoulos gathered documents and attempted to interview the Registrant. By email dated February 24, 2023, Ms. Anastasopoulos requested that the Registrant provide her with some date and time options to conduct an interview. As no response was received, Ms. Anastasopoulos sent follow-up emails on March 6 and 20, 2023. She also attempted to reach the Registrant by telephone on March 28, April 3, and April 12, 2023. The Registrant did not respond to any of these communications.

On April 18, 2023, Ms. Anastasopoulos sent a further email to the Registrant outlining all of her attempts to reach the Registrant and requesting that she provide her availability by end of day

April 26, 2023, failing which Ms. Anastasopoulos would issue a summons requiring her attendance. The Registrant did not respond.

On May 2, 2023, Ms. Anastasopoulos served the Registrant with a summons with a return date of May 18, 2023. The Registrant did not respond and did not attend on May 18, 2023, as required by the summons.

On August 29, 2023, the Registrant was sent correspondence with a proposed undertaking which would have her agree to refrain from practicing until she completed her Quality Assurance requirements. The Registrant was given an opportunity to comment on the proposed undertaking by September 12, 2023. The Registrant did not respond.

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 uncontroverted clear, cogent and convincing evidence that the Registrant engaged in professional misconduct when she failed to comply with Quality Assurance requirements, despite numerous chances to do so contrary to Clause 51(1)(b.0.1) of the Code and paragraphs 43 and 45 of Clause 51(1)(b.0.1).

The College also submitted that the evidence established that the Registrant engaged in professional misconduct when she failed to cooperate with Ms. Anastasopoulos' investigation contrary to paragraphs 43 and 45 of Clause 51(1)(b.0.1). The College submitted that there was significant evidence of numerous attempts to contact the Registrant to arrange an interview and the Registrant did not respond, attend for an interview, nor did she comply with a summons that had been issued contrary to paragraph 50 of Clause 51(1)(b.0.1) of the Code.

The College further submitted that the Registrant's conduct also would be viewed as 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 QAC's order and subsequent failure to cooperate with Ms. Anastasopoulos' investigation demonstrated 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 facts and heads of misconduct were 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. Clause 51(1)(b.0.1) (failing to cooperate with the QAC or any assessor appointed by that Committee);
- b. Paragraph 43 (failing to reply appropriately and responsively within the time specified by the request, or if no time is specified, within 30 days to a written inquiry made by the College that requests a response);
- c. Paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College);
- d. Paragraph 50 (failing to cooperate with an investigator of the College, upon production by the investigator of their appointment under section 75 of the Code);
- e. 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); and
- f. 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. They testified in a forthright manner. Their testimony was consistent with the documentary evidence filed. 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 in the Notice of Hearing, which supported findings that the Registrant engaged in the acts of professional misconduct as alleged.

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

Clause 51(1) (b.0.1) (failing to cooperate with the QAC or an assessor)

It is an act of misconduct to fail to cooperate with the QAC. The evidence from Ms. Macartney and the documentary evidence filed clearly demonstrates that, over a period of three years, the Registrant failed to fulfill her Quality Assurance requirements, despite numerous opportunities to do so.

Paragraph 43 (failing to reply to a written inquiry made by the College)

It is an act of misconduct to fail to respond appropriately, or within a reasonable time, to a written inquiry from the College. Every member of the profession is obliged to respond appropriately and

within a reasonable time to College inquiries when requested to do so. The obligation to respond to communications from a professional regulator and to cooperate with investigators is part of the legal and ethical duties required of members of a regulated profession. This is part of the responsibility of practicing a regulated profession. The documentary and oral evidence establishes that on numerous occasions, over a three year period, the Registrant was sent communications and either failed to respond entirely or her response was not sufficient. Accordingly, the Panel finds that the College established this head of misconduct on a balance of probabilities.

Paragraph 45 (failing to comply with an order or direction of a Committee)

Members of a profession are required to comply with orders or directions made by their regulatory body. The QAC made an order or direction relating to the Registrant with respect to her Quality Assurance requirements. The evidence established that while the Registrant completed parts of the requirements, she failed to complete all of the requirements ordered, despite numerous opportunities to do so. Accordingly, the Panel makes a finding pursuant the Notice of Hearing.

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. At no time did the Registrant respond to the telephone or emailed communications from Ms. Anastasopoulos. Further, the Registrant failed to attend after being summonsed by Ms. Anastasopoulos. Failure to comply with a summons is extremely serious.

Every member of the profession is obliged to cooperate with the College in its investigations. This is part of the responsibility of belonging to an independent, self-regulating body. 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)

All of the Registrant's conduct, as outlined above, would be viewed by members of the profession as conduct which is disgraceful, dishonourable and unprofessional. Generally speaking, conduct that demonstrates lack of integrity, or disregard for the welfare and safety of members of the public, is conduct that will not be tolerated by a health profession. Failing to respond to, cooperate with or comply with one's regulatory body places the public at risk and is conduct that cannot be tolerated.

Moreover, the Panel considered and accepted ILC'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. The Registrant's conduct, described above, ultimately placed the entire profession in a negative light, hampered the College's ability to regulate in the public interest, and amounted to conduct unbecoming a dental hygienist.

SUBMISSIONS ON PENALTY AND COSTS

The College sought a reprimand and the revocation of the Registrant's certificate of registration. The College submitted that revocation was appropriate because the Registrant was unwilling to be governed by the College. She had a pattern of not responding, had missed multiple deadlines and did not participate in the interview or respond to the summons. The College submitted that any penalty ordered needs to protect the public and the Registrant's conduct demonstrates that she is not willing to be governed and therefore, only removing her from the profession would accomplish this.

The College also submitted that revocation would achieve the sanctioning principles. The College submitted that revocation would accomplish general deterrence as it would show other members of the profession that a serious disregard for one's professional obligations won't be tolerated. The College further noted that only revocation was specific to prevent this kind of conduct on the part of the Registrant thereby achieving the goal of specific deterrence.

The College noted that there were no mitigating factors, other than the Registrant not having a prior discipline history. The College outlined that the Registrant's persistent disregard for the College's authority over an extended period of time and the Registrant's failure to comply and be responsive were aggravating factors.

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.

With respect to costs, the College asked that the Registrant pay costs in the amount of \$13,852.94. The College submitted that costs are not meant to be punitive and reflect two-thirds of the College's actual costs and expenses incurred.

The Registrant did not attend and did not make submissions on penalty and costs.

PENALTY DECISION

The Panel carefully considered the College's submissions, advice from independent legal counsel and the case law, and made the following order:

- a. The Registrant is required to appear, by electronic means, before a panel of the Discipline Committee to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register.
- b. The Registrar is directed to revoke the Registrant's certificate of registration, effective immediately.
- c. The Registrant is required to pay the College's costs in the amount of \$13,852.94 within thirty (30) days of the date of this order.

REASONS FOR DECISION ON PENALTY

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

In finding the Registrant ungovernable, the Panel considered the Registrant's conduct in repeated failures to respond to the College, to cooperate with the QAC and the College's investigator and by not complying with the order of the QAC or a summons. The College's evidence demonstrated repeated attempts to communicate with the Registrant, and giving her an opportunity to comply with her regulatory requirements, which she failed to do. These facts demonstrated the Registrant's total neglect of her duties and obligations to the College as a regulated health professional.

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 or 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 not complying with basic regulatory obligations, 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.

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.

I, Maheen Cassim, 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:

Maheen Cassim

April 25, 2024

Maheen Cassim, Professional Member, Panel Chair

Date

Amanda Acker	Professional Member
Mary Yeomans	Professional Member
Martin Iyamabo	Public Member