

COLLEGE OF ALBERTA DENTAL ASSISTANTS

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, RSA 2000, c H-7

AND IN THE MATTER OF
A HEARING TRIBUNAL HEARING
REGARDING THE CONDUCT OF SURINDER SUMMAN (REGISTRATION NUMBER 3547),
A REGULATED MEMBER OF
THE COLLEGE OF ALBERTA DENTAL ASSISTANTS

**MERITS DECISION OF A HEARING TRIBUNAL OF THE
COLLEGE OF ALBERTA DENTAL ASSISTANTS**

E. Ezike-Dennis dissenting on Charge #1

Introduction

A Hearing Tribunal of the College of Alberta Dental Assistants (the College), under the authority of the *Health Professions Act* (the Act) met virtually on June 11, 2024.

In attendance on behalf of the Hearing Tribunal were:

Patricia Hull	Chairperson and Public Member
Susan Nicoll, RDA	Member
Corinne Vollrath, RDA	Member
Emeka Ezike-Dennis	Public Member

In attendance at the hearing were Mr. Taylor Maxston, legal counsel for the Complaints Director; Ms. Susan vander Heide, Complaints Director for the College; and Ms. Kimberly Precht, independent legal counsel to the Hearing Tribunal.

Ms. Summan, the investigated person, was not in attendance.

Allegations

The allegations were set out in a Notice of Hearing dated April 5, 2024, alleging Ms. Summan engaged in unprofessional conduct with respect to the following matters:

1. On or about December 1, 2023, and up to and including March 8, 2024, Surinder Summan failed to provide the required proof of the type and amount of professional liability insurance as required in the *Health Professions Act*, the College's Standards of Practice and the College's Bylaws, despite having renewed and maintained an active practice permit;

All of which constitutes unprofessional conduct for the purposes of section 1(1)(pp)(i), (ii), (vii)(B) and/or (xii) of the *Health Professions Act* including breaching section 40(1)(c) of the *Health Professions Act* and/or Indicator 2.2(h) of the College's Standards of Practice.

2. On or about December 15, 2023, and up to and including March 7, 2024, Surinder Summan failed to respond, failed to respond meaningfully and/or failed to respond promptly:
 - a. To multiple attempted communications by College personnel; and/or
 - b. To multiple attempted communications from the Complaints Director as an investigator appointed pursuant to the Part 4 Professional Conduct provisions of the *Health Professions Act*;

All of which constitutes unprofessional conduct for the purposes of section 1(1)(pp)(i), (ii), and/or (xii) of the *Health Professions Act* including breaching Indicator 6.2(c) of the College's Code of Ethics.

During the hearing, Mr. Maxston clarified that s. 1(1)(pp)(vii)(B) of the *Health Professions Act* (the Act) which includes a "failure or refusal to comply with a request of or co-operate with an investigator" in the definition of "unprofessional conduct", is relevant to Charge 2(b), not to Charge 1.

Preliminary Matters

There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.

At the outset of the hearing, the Complaints Director made a preliminary application to proceed in Ms. Summan's absence. Section 72(1) of the Act states the investigated person must appear at a hearing before the Hearing Tribunal. However, s. 79(6) of the Act provides as follows:

79(6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may

- (a) proceed with the hearing in the absence of the investigated person, and
- (b) act or decide on the matter being heard in the absence of the investigated person.

Also relevant, s. 120(3) of the Act provides that if a document or notice is required to be given under Part 4 of the Act by a hearings director to an investigated person, "the document or notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at that person's address as shown on the register or record of the registrar."

Evidence

Mr. Maxston called two witnesses in support of the Complaints Director's application to proceed in Ms. Summan's absence: Carol Collison, Hearings Director; and Susan vander Heide, Complaints Director.

Mr. Maxston called the Hearings Director as the first witness. The Hearings Director detailed her communications with Ms. Summan about this hearing. She identified a letter she sent to Ms. Summan on April 5, 2024, by registered mail (Exhibit 1) and by email (Exhibit 3), enclosing the Notice of Hearing, Notice to Attend and Notice to Produce (the "Notice of Hearing").

With respect to the letter sent to Ms. Summan by registered mail on April 5, 2024 (Exhibit 1), the Hearings Director identified the Canada Post tracking receipt indicating that the letter was sent to Ms. Summan by registered mail (Exhibit 2) and the Canada Post delivery progress report indicating that the letter was returned to sender on April 29, 2024, after being marked "unclaimed" (Exhibit 4).

With respect to the letter sent to Ms. Summan by email on April 5, 2024, the Hearings Director identified an Outlook notification she received, which stated: "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server" (Exhibit 3). The Hearings Director testified that she did not receive any subsequent messages indicating a failure to deliver the email.

The Hearings Director confirmed she obtained Ms. Summan's mailing address ([REDACTED]) and email address ([REDACTED]) from the College's database, which is populated by information provide by registrants such as Ms. Summan.

In response to questions from the Hearing Tribunal, the Hearings Director testified that she also tried to reach Ms. Summan by telephone on three occasions, using the home phone number for Ms. Summan in the College's database. On March 20, 2024, the Hearings Director left a voicemail message; on March 21, 2024, the Hearings Director called again and was unable to leave a message because Ms. Summan's voicemail was full; on March 26, 2024, the Hearings Director left another voicemail message.

The Hearings Director testified that at no point did she receive a response to any of her attempts to communicate with Ms. Summan about this hearing.

Mr. Maxston then called the Complaints Director as a witness with respect to the application to proceed in the absence of the investigated person.

The Complaints Director identified her investigation report (Exhibit 5). The investigation report included various attachments including a letter the Complaints Director sent to Ms. Summan on February 2, 2024, enclosing a Notice of Investigation and requesting Ms. Summan's response to the allegations in the Notice of Hearing. The Complaints Director testified that she sent this letter to Ms. Summan by registered mail on February 2, 2024, using the mailing address in the College's database. The Complaints Director identified the Canada Post tracking receipt

indicating that the letter was sent February 2, 2024, and the Canada Post delivery progress report indicating the letter was delivered and signed for by Ms. Summan on February 13, 2024, both of which were also attached to her investigation report.

Submissions

Mr. Maxston submitted that the evidence established that Ms. Summan had been notified of the hearing such that the hearing should proceed in her absence. Mr. Maxston submitted that section 120(3) should not be read restrictively and should be read to include notification by email using Ms. Summan's email address as shown on the College's register.

Mr. Maxston noted it was Ms. Summan's obligation to keep her contact information current, and that the College had relied on contact information provided by Ms. Summan. Mr. Maxston also emphasized that although the Hearings Director's April 5, 2024, letter sent by registered mail was returned to sender, Ms. Summan signed for a letter sent to the same address by the Complaints Director in February 2024.

Mr. Maxston submitted that the Hearings Director had made all reasonable efforts to bring the Notice of Hearing to Ms. Summan's attention.

Decision

The Hearing Tribunal considered the evidence and submissions carefully. Based on the evidence of the Hearings Director and the Complaints Director, and the requirements set out in the Act, the Hearing Tribunal was satisfied that Ms. Summan was properly notified of the Hearing.

Section 79(6) of the Act authorizes the Hearing Tribunal to proceed with the hearing and decide the matter being heard in the absence of the investigated person, if the investigated person does not attend despite proof that the investigated person has been given a notice to attend. Therefore, the Hearing Tribunal considered whether there was proof that Ms. Summan was given a notice to attend.

Section 120(3) of the Act provides that if a notice is required to be given under Part 4 by the Hearings Director, "the notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at that person's address as shown on the register or record of the registrar." The Hearing Tribunal was satisfied that the Hearings Director's April 5, 2024, letter enclosing the Notice of Hearing (which included a notice to attend) was *sent* to Ms. Summan by registered mail at the address shown on the College's register.

However, the evidence also established that the Hearings Director's April 5, 2024, letter was returned to sender and was not *received* by Ms. Summan. Therefore, before deciding to proceed in Ms. Summan's absence, the Hearing Tribunal also considered the College's other efforts to communicate with Ms. Summan. As a regulated member of the College, it is Ms. Summan's responsibility to keep her contact information current, so the College can communicate with her as needed. Further, there was evidence that Ms. Summan received

registered mail at the same mailing address less than two months before the Hearings Director sent Ms. Summan the Notice of Hearing on April 5, 2024. Beyond this, the Hearings Director also sent the April 5, 2024, letter enclosing the Notice of Hearing to Ms. Summan using the email address Ms. Summan had provided to the College. The Hearings Director received confirmation from Outlook that delivery to Ms. Summan's email address was "complete, but no delivery notification was sent by the destination server". While it was impossible to be certain Ms. Summan received the Hearings Director's April 5, 2024, email, the Hearings Director confirmed she did not receive any bounce-backs or any indication that the email enclosing the Notice of Hearing was *not* delivered. The Hearing Tribunal also considered that the Hearings Director twice left voicemail messages on Ms. Summan's home telephone before sending the Notice of Hearing, and did not receive a response.

In all these circumstances, the Hearing Tribunal is satisfied that a notice to attend was sent to Ms. Summan at the mailing address and email address on the College's register, and that beyond the strict requirements of s. 120(3) of the Act, the College made significant efforts to bring this hearing to Ms. Summan's attention. As such, the Hearing Tribunal granted the Complaints Director's application to proceed in the absence of the investigated person, in accordance with s. 79(6) of the Act.

Evidence

Mr. Maxston entered the following exhibits, which included evidence relevant to the preliminary application to proceed in the member's absence as well as the merits of the charges:

- Exhibit 1 April 5, 2024 notice of hearing letter from the Hearings Director to Ms. Summan and enclosures: April 5, 2024 Notice of Hearing, Notice to Attend and Notice to Produce, Part 4 of the *Health Professions Act*, and Hearing Steps and Procedures
- Exhibit 2 Registered mail chit for April 5, 2024 notice of hearing letter and enclosure sent to Surinder Summan
- Exhibit 3 April 5, 2024 notice of hearing email from the Hearings Director to Ms. Summan, and Outlook confirmation of email delivery
- Exhibit 4 Registered mail delivery progress report and envelope showing registered mail sent on April 5, 2024 (Exhibit 1) was returned April 29, 2024, marked "unclaimed"
- Exhibit 5 Investigation Report, Surinder Summan, Registration Number 3547, signed March 6, 2024, by the Complaints Director
- Exhibit 6 April 5, 2024 Notice of Hearing and cover letter to Ms. Summan
- Exhibit 7 December 15, 2023 email from the Registration Manager to Ms. Summan with other recipients redacted
- Exhibit 8 Screenshot of [REDACTED] payment acknowledgement message, uploaded by Ms. Summan with her practice permit renewal application for the December 1, 2023 to November 31, 2024 registration cycle

During the hearing, witnesses identified and testified about each of the exhibits listed above.

With respect to the merits of the charges set out in the *Notice of Hearing*, the Complaints Director called the following College staff members as witnesses:

Jill Bateman, Registration Manager

Susan vander Heide, Complaints Director

Evidence of the Registration Manager

Ms. Bateman testified that she had been in the role of Competence and Registration Manager (referred to as “Registration Manager” in this decision) for one year. She outlined her responsibilities on the registration side, which included auditing registrants to ensure they have provided proof of Professional Liability Insurance (“PLI”) and have completed requirements such as the Patient Relations Module. Except where indicated otherwise, the documents the Registration Manager referenced in her testimony were included as appendices to the Complaints Director’s investigation report (Exhibit 5).

The Registration Manager explained the College’s practice permit renewal process. Practice permits are valid from December 1 until November 30 of the following year. Registrants must submit a renewal application each year before November 30. As part of the application process, registrants must upload a PLI certificate that indicates the amount and type of coverage and the effective dates of coverage. The Registration Manager explained that PLI is malpractice insurance, and each registrant must hold their own policy, to protect the registrant and their patients in the event something happens. The Registration Manager testified that this requirement stems from the Act and the Standards of Practice.

With respect to Ms. Summan’s practice permit renewal application for the period from December 1, 2023, to November 30, 2024, the Registration Manager testified that Ms. Summan submitted a renewal application but did not upload the required PLI certificate. Instead, Ms. Summan uploaded a screenshot of a payment processing message from [REDACTED] (an insurance brokerage), which did not indicate what the payment was for and did not include any details that would allow the Registration Manager to determine the amount and type of coverage or the effective dates of coverage. (A copy of the [REDACTED] screenshot was entered into evidence as Exhibit 8, during the Complaints Director’s testimony.)

The Registration Manager testified about the process by which the College followed up with Ms. Summan and other registrants who did not upload a PLI certificate, which was to email the applicant letting them know the information they provided was insufficient and giving them a timeline to provide the required documentation through the College’s online portal before following up again. The Registration Manager identified an email she sent on December 15, 2023, to 143 individuals who failed to provide satisfactory proof of PLI coverage, including Ms. Summan (Exhibit 7). The email read as follows:

Hello ~

We reviewed the professional liability insurance (PLI) information you provided as part of your renewal application. The verification document did not meet our requirements for proof of coverage. We need a copy of your insurance certificate.

You must provide a copy of your PLI certificate for December 1, 2023, to November 30, 2024.

Please log in to the CADA Portal (<https://abrda.ca/>) and go to the menu item *Insurance* and click the + *Add Insurance* button to upload a copy of your **2024 PLI Certificate** (*not a copy of the receipt or the policy*).

You must upload a copy of your PLI certificate on or before Tuesday, January 2, 2024.

This will be your only notice to comply. If we are unable to find proof of PLI that meets our requirements when we next review your records after January 2, 2024, we may refer you to the Complaints Director.

Do you have questions? Do you need help? Let us know. You can reach us at renewal@abrda.ca.

Warm regards,

Jill Bateman (she/her)

Competence and Registration Manager

The Registration Manager testified that Ms. Summan did not upload her PLI certificate by the January 2, 2024, deadline and, in fact, did not respond in any way.

The Registration Manager testified about further efforts to contact Ms. Summan about her outstanding PLI certificate. The Registration Manager prepared a letter dated January 4, 2024, which the Registrar then sent to Ms. Summan on January 5, 2024, by registered mail. The letter again instructed Ms. Summan of the steps she needed to take, and extended the deadline for compliance to January 18, 2024, failing which the letter stated: "we may refer you to the Complaints Director for non-compliance with a registration requirement." Ms. Summan did not upload her PLI certificate by January 18, 2024, and did not respond to the Registration Manager or the Registrar.

By letter to the Complaints Director dated January 30, 2024, the Registration Manager made a formal complaint about Ms. Summan, in which she identified two issues:

- Ms. Summan's failure to provide proof of PLI coverage as part of her annual practice permit renewal for the December 1, 2023, to November 30, 2024, registration cycle; and
- Ms. Summan's failure to respond to correspondence and requests regarding the outstanding PLI requirement in a timely manner.

Evidence of the Complaints Director

Ms. vander Heide testified that she has been the College's Complaints Director since 2009. She confirmed that she received and investigated this complaint against Ms. Summan. Except where indicated otherwise, the documents the Complaints Director referenced in her testimony were included as appendices to her investigation report (Exhibit 5).

The Complaints Director testified about the importance of PLI, which she stated is sometimes called malpractice insurance. The Complaints Director emphasized that it protects patients if there is an incident of harm but also protect dental assistants because sometimes monetary penalties arising from such incidents are enough to destroy someone's career and life. The Complaints Director stated the requirement for dental assistants to maintain and provide proof of PLI coverage comes from the Act, the Bylaws, and the Standards of Practice.

The Complaints Director also testified that the College communicates to registrants throughout the year about PLI requirements, and identified examples of such communication that were appended to the investigation report, including the following reminder sent to registrants in September 2023:

Remember to Renew Your PLI Coverage Too

Get your Professional Liability Insurance (PLI) coverage for December 1, 2023, through November 30, 2024, in place before you apply to renew your Practice Permit. Have proof of that coverage ready to upload in your renewal application. Questions? Review our PLI questions and answers for details.

[Link:] REVIEW PLI QUESTIONS & ANSWERS

The Complaints Director estimated that similar communications were sent to registrants monthly or every six weeks.

The Complaints Director identified the [REDACTED] screenshot that Ms. Summan had uploaded with her practice permit renewal application (Exhibit 8), which read, in full, as follows:

Thank you Surinder!

Your payment has been processed.

We are compiling your documents
and in the next few minutes they will
be sent to:

[REDACTED]

Your confirmation number is: [REDACTED]

[REDACTED]

The Complaints Director testified that the [REDACTED] screenshot was not sufficient proof of PLI coverage because it did not include a full name, address, effective dates, amount, or a description of the type of coverage.

The Complaints Director testified that she sent a Notice of Investigation to Ms. Summan by letter dated February 2, 2024. The Complaints Director sent the letter by registered mail on February 2, 2024, and subsequently received confirmation from Canada Post that the letter was picked up and signed for by Ms. Summan on February 13, 2024.

In her February 2, 2024, letter, the Complaints Director specifically requested a response from Ms. Summan to the allegations in the Notice of Investigation by no later than February 20, 2024. The Complaints Director advised Ms. Summan that her response must include a copy of her PLI certificate as proof of the type and amount of PLI required in the College bylaws. The Complaints Director did not receive a response from Ms. Summan by February 20, 2024, and Ms. Summan did not upload her PLI certificate.

The Complaints Director testified that on February 21, 2024, when she had not heard from Ms. Summan, she sent a copy of her February 2, 2024, letter and the original enclosures to Ms. Summan by email and asked her to upload her current PLI certificate by February 23, 2024. The Complaints Director explained her purpose for sending this email was that she hoped to perhaps prod Ms. Summan a bit to comply with the requirements. The Complaints Director received an Outlook notification that “[d]elivery to these recipients or groups is complete but no delivery notification was sent by the destination server”. There was no indication that the email was not delivered. Ms. Summan did not upload her PLI certificate by February 23, 2024, and did not respond to the Complaints Director’s email.

On February 27, 2024, the Complaints Director sent a further email to Ms. Summan, indicating that if her PLI certificate was not uploaded by February 29, 2024, the matter would be referred to a hearing. Again, the Complaints Director received an Outlook notification that delivery was complete but no delivery notification was sent by the destination server. By February 29, 2024, there was no reply and Ms. Summan had not uploaded her PLI certificate. Accordingly, the Complaints Director referred the matter to a hearing.

Submissions

In his closing submissions on behalf of the Complaints Director, Mr. Maxston reiterated that the onus was on the Complaints Director to establish on a balance of probabilities that the alleged facts are proven, and second, to establish on a balance of probabilities that the proven facts constitute unprofessional conduct.

Mr. Maxston emphasized the importance of the College’s role as a regulatory body, noting s. 3(1)(a) of the Act, which requires the College to “carry out its activities and govern its regulated members in a manner that protects and serves the public interest”. Mr. Maxston submitted the College does this in many ways, including by requiring registrants to carry PLI coverage.

Mr. Maxston referred to the definition of “unprofessional conduct” in the Act, which includes “displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services” (s. 1(1)(pp)(i)); “contravention of this Act, a code of ethics or standard of practice” (s. 1(1)(pp)(ii)); “failure or refusal to comply with a request of or co-operate with an investigator” (s. 1(1)(pp)(vii)(B)); and “conduct that harms the integrity of the regulated member” (s.

1(1)(pp)(xii)). Mr. Maxston submitted that section 1(1)(pp)(vii)(B), regarding a failure or refusal to comply with a request of an investigator, was only relevant to Charge 2(b).

Mr. Maxston submitted that the Hearing Tribunal could use these sections of the Act as tools to measure Ms. Summan's conduct, along with the Code of Ethics and Standards of Practice, the professional knowledge, training and expertise of the regulated members on the Hearing Tribunal, and the Hearing Tribunal members' common sense.

With respect to Charge 1, which alleged that Ms. Summan failed to provide the required proof of PLI coverage, Mr. Maxston drew the Hearing Tribunal's attention to:

- Section 40(1)(c) of the Act, which requires registrants to provide "evidence of having the amount and type of professional liability insurance required by the bylaws" as part of a complete practice permit renewal application;
- Indicator 2.2(h) of the Standards of Practice, which requires registrants to maintain the level of professional liability insurance required by the College Council; and
- Article 12 of the Bylaws, which set out what a registrant must supply as proof of professional liability insurance upon application for practice permit renewal.

Mr. Maxston highlighted key evidence from the Registration Manager and the Complaints Director which, he submitted, established that although Ms. Summan renewed her practice permit for the December 1, 2023, to November 30, 2024, registration cycle, Ms. Summan did not upload the required proof of PLI, despite many opportunities to do so.

With respect to Charge 2, which alleged that Ms. Summan failed to respond to communications from College personnel and from the Complaints Director as investigator, Mr. Maxston drew the Hearing Tribunal's attention to:

- Section 6.2(c) of the Code of Ethics, which requires registrants to communicate with the College in a professional and timely manner, by giving correspondence, communications and requests from the College "timely attention and appropriate professional response."

Charge 2 included two particulars. Particular (a) focused on Ms. Summan's alleged failure to respond to "multiple attempted communications by College personnel". Mr. Maxston submitted that this was established through the evidence of the Registration Manager, who testified that Ms. Summan did not respond or take action in response to emails and correspondence sent to her by registered mail. Nor did Ms. Summan ask for additional time or assistance. Mr. Maxston also highlighted key parts of the Complaints Director's evidence, including evidence of various communications from the College reminding registrants of the requirements concerning PLI, and the additional opportunities Ms. Summan had to provide her PLI certificate even after the matter was referred to the Complaints Director.

Particular (b) focused on Ms. Summan's alleged failure to respond to "multiple attempted communications from the Complaints Director as an investigator appointed pursuant to the Part 4 Professional Conduct Provisions of the [Act]." Mr. Maxston submitted that this was established

through the evidence of the Complaints Director, who testified about her many attempts to contact Ms. Suman, including her letter sent by registered mail on February 5, 2024, and emails sent on February 21, 2024, and February 27, 2024, before the Complaints Director decided to refer the matter to a hearing.

In summary, Mr. Maxston submitted that the Hearing Tribunal serves as a gatekeeper under the Act, and that in this case there was appropriate evidence to make findings of unprofessional conduct that warrant penalty orders.

After hearing Mr. Maxston's submissions on behalf of the Complaints Director, the Hearing Tribunal adjourned to deliberate, before returning with questions for Mr. Maxston.

The Hearing Tribunal noted that Mr. Maxston had referred to s. 40(1)(c) of the Act, which requires a registrant to include with their application for a practice permit "evidence of having the amount and type of professional liability insurance required by the bylaws." Noting that Ms. Summan was alleged not to have provided this, the Hearing Tribunal asked Mr. Maxston to address whether there were any consequences in the practice permit renewal process as a result of that alleged failure, other than referring this matter to the Complaints Director as potential unprofessional conduct. The Hearing Tribunal was seeking to understand what happened with respect to Ms. Summan's practice permit application.

In response, Mr. Maxston pointed to the specific wording in Charge 1, which includes the phrase "despite having renewed and maintained an active practice permit." Mr. Maxston confirmed that Ms. Summan's practice permit was in fact renewed and she continues to hold an active practice permit.

Independent legal counsel to the Hearing Tribunal asked a clarifying question, pointing to section 40(2) of the Act, which requires the Registrar to consider a practice permit application and take one of several possible actions, which include approving or refusing the practice permit application. Ms. Precht clarified that the Hearing Tribunal was trying to understand what decision was made with respect to Ms. Summan's practice permit renewal application.

After a brief adjournment so that Mr. Maxston could consult with the Complaints Director, Mr. Maxston offered further clarification about the College's practice permit renewal application process. He explained that applications are submitted electronically, with requirements to submit various documents. Certain declarations made during the application process, such as a declaration that a registrant has been convicted of a criminal offence, trigger review by the Registrar. However, for the PLI requirement, the electronic system does not discriminate depending on what is uploaded. As long as *something* is uploaded, the electronic system will treat the application as complete and will automatically process the application and a practice permit will be issued. It is only after the renewal deadline passes that an audit team conducts a review of the PLI documentation submitted by applicants and follows up with registrants who did not provide the required proof.

Findings

After carefully reviewing and considering all the exhibits and testimony, and all the submissions from legal counsel, the Hearing Tribunal makes the following findings:

Charge 1 – On or about December 1, 2023, and up to and including March 8, 2024, Surinder Summan failed to provide the required proof of the type and amount of professional liability insurance as required in the *Health Professions Act*, the College’s Standards of Practice and the College’s Bylaws, despite having renewed and maintained an active practice permit.

The Hearing Tribunal first considered whether the Complaints Director had established the alleged facts on a balance of probabilities. For the following reasons, the Hearing Tribunal concluded Charge 1 was factually proven.

Section 40(1)(c) of the Act requires registrants to provide evidence of having the amount and type of PLI required by the bylaws, as part of a complete practice permit renewal application. In turn, Article 12 of the Bylaws is specific about what is required as proof of satisfactory PLI, as follows:

[...] Proof must show:

- (a) name of the insured must be the same as the name of the person applying for registration/ reinstatement/ renewal;
- (b) professional liability insurance coverage is written on an occurrence form;
- (c) Regulated Member is insured for a minimum limit of at least two-million dollars (\$2,000,000.00) per occurrence; and,
- (d) Regulated Member is insured for a minimum annual aggregate limit of at least three million dollars (\$3,000,000.00).

The screenshot uploaded by Ms. Summan as part of her practice permit renewal application did not meet any of the requirements set out in the Bylaws and did not allow the College to assess whether Ms. Summan had the required level of PLI insurance. The Hearing Tribunal accepted the evidence of the Registration Manager and Complaints Director that Ms. Summan did not subsequently provide the required proof of PLI coverage. Accordingly, the Hearing Tribunal concluded that Charge 1 is factually proven.

The Hearing Tribunal then considered whether the proven factual conduct constituted unprofessional conduct. The majority of the Hearing Tribunal concluded it did, while Mr. Ezike-Dennis concluded it did not. Mr. Ezike-Dennis’ dissenting reasons are set out below, followed by the reasons of the majority.

Dissenting reasons of Mr. Ezike-Dennis

Mr. Ezike-Dennis agreed that Ms. Summan clearly failed to comply with the requirements set out in the Act and the Bylaws with respect to proof of PLI coverage. However, Mr. Ezike-Dennis viewed this an administrative matter, not a disciplinary matter.

Section 40(1) sets out the requirements for a complete practice permit renewal application, while s. 40(2) sets out the actions the Registrar may take after considering a practice permit renewal application. The Registrar is authorized to “to approve the application if the regulated member meets the requirements set out in subsection (1) and issue the member a practice permit” (s. 40(2)(a)). Because Ms. Summan did not meet the requirements set out in s. 40(1), the Registrar should not have approved her practice permit renewal application and should not have issued a new practice permit to Ms. Summan unless and until Ms. Summan provided the required PLI proof. The Registrar also has authority “to refuse the application for a practice permit” (s. 40(2)(d)). Given that Ms. Summan did not provide a current PLI certificate despite repeated reminders and opportunities to do so, the Registrar should have considered refusing Ms. Summan’s practice permit renewal application.

Mr. Ezike-Dennis was not prepared to find that the proven factual conduct in Charge 1 rises to the level of unprofessional conduct, because in his view it should never have been addressed as a matter of professional conduct at all. Ms. Summan’s failure to meet the requirements for a practice permit renewal application should have been addressed administratively.

Reasons of the majority of the Hearing Tribunal

All four members of the Hearing Tribunal found it very concerning that a practice permit was issued to Ms. Summan despite her failure to meet the requirements set out in s. 40(1) of the Act. PLI serves a very important role in protecting patients and dental assistants if something goes wrong. This is why the Standards of Practice explicitly require dental assistants to maintain the level of PLI required by the College Council through the Bylaws. The Hearing Tribunal finds it extremely concerning that Ms. Summan continues to hold an active practice permit in circumstances where the College does not know, one way or another, whether she has the required level of PLI coverage. While the other three members of the Hearing Tribunal agreed with Mr. Ezike-Dennis that there should be a way for the Registrar *not* to issue a practice permit to an applicant who fails to meet the requirements set out in s. 40(1) of the Act, they were nevertheless satisfied that Ms. Summan’s failure to provide proof of her PLI coverage constituted unprofessional conduct.

The requirements for proof of PLI coverage are set out in detail in the Bylaws. Further, the College regularly reminds registrants of their obligation to provide proof of PLI coverage as part of their practice permit renewal application. In Ms. Summan’s case, after her initial failure to provide the required proof of PLI coverage, the College provided additional guidance about the steps she needed to take to meet this requirement. The Hearing Tribunal noted that the Registration Manager’s December 15, 2023, email to Ms. Summan and others who failed to provide proof of PLI coverage ended with the words: “Do you have questions? Do you need

help? Let us know. You can reach us at renewal@abrda.ca.” Even after this matter was referred to the Complaints Director, Ms. Summan was given several further opportunities to provide a current PLI certificate. When the majority of the Hearing Tribunal considered all these factors, they were satisfied that Ms. Summan’s failure to provide proof of her PLI coverage, either at the time she submitted her practice permit renewal application, or afterwards, rose to the level of unprofessional conduct.

Therefore, with Mr. Ezike-Dennis dissenting, the Hearing Tribunal concluded that the proven factual conduct in Charge 1 constitutes unprofessional conduct. Ms. Summan’s conduct fell within the definition of unprofessional conduct in that it contravened the Act and the Code of Ethics (s. 1(1)(pp)(ii)) and generally harms the integrity of the dental assisting profession (s. 1(1)(pp)(xii)).

Charge 2 – On or about December 15, 2023, and up to and including March 7, 2024, Surinder Summan failed to respond, failed to respond meaningfully and/or failed to respond promptly:

- a. To multiple attempted communications by College personnel; and/or**
- b. To multiple attempted communications from the Complaints Director as an investigator appointed pursuant to the Part 4 Professional Conduct provisions of the Health Professions Act.**

The Hearing Tribunal first considered whether particular 2(a) was factually proven on a balance of probabilities. The exhibits entered during the hearing established that, after it came to the College’s attention that Ms. Summan did not provide the required PLI proof with her practice permit renewal application, the Registration Manager attempted to communicate with Ms. Summan on two occasions:

- On December 15, 2023, the Registration Manager emailed Ms. Summan and others asking them to upload her current PLI certificate by January 2, 2024; and
- When Ms. Summan did not respond or take appropriate action, the Registration Manager followed up with a letter sent by registered mail on January 5, 2024.

The Hearing Tribunal is satisfied that both the December 15, 2023, email and the January 5, 2024, letter were sent to Ms. Summan using contact information Ms. Summan had provided to the College, and that Ms. Summan did not respond to either communication. Therefore, the Hearing Tribunal concluded that particular 2(a) is factually proven.

The Hearing Tribunal then considered whether particular 2(b) was factually proven on a balance of probabilities. The exhibits entered during the hearing established that the Complaints Director attempted to communicate with Ms. Summan as follows:

- On February 2, 2024, the Complaints Director sent Ms. Summan a letter enclosing the Notice of Investigation by registered mail. In her letter, the Complaints Director identified her authority as an investigator under the Act, and asked Ms. Summan to

respond to the allegations set out in the Notice of Investigation and provide her current PLI certificate by no later than February 20, 2024;

- When Ms. Summan did not respond or take appropriate action, despite having signed for and received the Complaints Director's February 2, 2024, letter, the Complaints Director followed up by email on February 21, 2024, and extended Ms. Summan's deadline to respond to February 23, 2024; and
- When Ms. Summan still did not respond or take appropriate action, the Complaints Director followed up again by email on February 27, 2024, and extended Ms. Summan's deadline to respond once more to February 29, 2024.

Again, the Hearing Tribunal is satisfied that the Complaints Director used the mailing address and email address Ms. Summan had provided to the College. Further, although there is evidence that Ms. Summan signed for and received the Complaints Director's February 2, 2024, letter, the evidence establishes that Ms. Summan did not respond to any of the Complaints Director's attempts to communicate with her. As such, the Hearing Tribunal concluded that particular 2(b) is factually proven.

The Hearing Tribunal then considered whether Ms. Summan's failure to respond to the Registration Manager and the Complaints Director rose to the level of unprofessional conduct, and found it did.

The College has a duty to govern its registrants in a manner that protects and serves the public interest. If registrants are unresponsive to College personnel, it undermines the College's ability to effectively govern its registrants. Indicator 6.2(c) of the Standards of Practice clearly outlines the expectation that dental assistants give timely attention and appropriate professional response to communications and requests from the College. Ms. Summan contravened this expectation, and thus her conduct falls within the definition of "unprofessional conduct" as a contravention of the Standards of Practice (s. 1(1)(pp)(ii)). Ms. Summan's failure to respond to the Complaints Director also falls within the definition of "unprofessional conduct" as a "failure or refusal to comply with a request of or cooperate with an investigator" (s. 1(1)(pp)(vii)(B)). Finally, Ms. Summan's failure to respond to her regulator's repeated attempts to communicate with her harms the integrity of the regulated profession (s. 1(1)(pp)(xii)). While anyone can miss an email, Ms. Summan's failure to respond *at all* to the College's many attempts to communicate with her was irresponsible and unacceptable and cannot be condoned.

Sanctions Submissions

The Hearing Tribunal is now ready to receive submissions from the Complaints Director and Ms. Summan about what orders it should impose under s. 82 of the Act, having decided that Ms. Summan's conduct constitutes unprofessional conduct. If the Complaints Director or Ms. Summan wishes to appear before the Hearing Tribunal to make oral submissions on sanctions, they must advise the Hearings Director in writing by no later than **June 28, 2024**, and a further virtual hearing date will be arranged. Otherwise, the Hearing Tribunal directs the Complaints Director and Ms. Summan to provide written submissions on sanction, as follows:

1. The Complaints Director must provide written submissions to the attention of the Hearings Director by no later than **July 12, 2024**, addressing what orders the Hearing Tribunal should impose under s. 82 of the Act. The Complaints Director must send also a copy of their written submissions to Ms. Summan by email and by registered mail, using the contact information on the College's register.
2. Ms. Summan may then provide a written response to the attention of the Hearings Director by no later than **July 19, 2024**. The purpose of Ms. Summan's written response is only to address what orders the Hearing Tribunal should impose under s. 82 of the Act; it is not an opportunity for Ms. Summan to challenge the Hearing Tribunal's findings that her conduct constituted unprofessional conduct. If Ms. Summan does not provide written submissions by this deadline, the Hearing Tribunal will proceed to make a decision on sanctions without receiving submissions from Ms. Summan.

The Hearing Tribunal specifically directs that this decision be sent to Ms. Summan by email and by registered mail, using the contact information on the College's register.

Dated at the City of Edmonton, in the Province of Alberta, on Friday, the 21st day of June, 2024.

Signed on Behalf of the Hearing Tribunal

by its Chairperson

Patricia Hull

Ms. Patricia Hull