

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 ALLYSHA CALDWELL (REGISTRATION NUMBER 10926),
A REGULATED MEMBER OF
THE COLLEGE OF ALBERTA DENTAL ASSISTANTS
**DECISION OF A HEARING TRIBUNAL OF THE
COLLEGE OF ALBERTA DENTAL ASSISTANTS**

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 August 23, 2024.

In attendance on behalf of the Hearing Tribunal were:

Nicole Bartindale, RDA	Chairperson
Emeka Ezike-Dennis	Public Member
Susan Nicoll, RDA	Member
Barbara Rocchio	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. Caldwell, the investigated member, was not in attendance.

Allegations

The allegations were set out in a Notice of Hearing dated June 26, 2024, alleging Ms. Caldwell engaged in unprofessional conduct as follows:

1. On or about December 1, 2023, and up to and including March 8, 2024, Allysha Caldwell failed to provide the required proof of the type and amount of professional liability insurance as required in the *Health Professions Act*, the College of Alberta Dental Assistants (“College”) 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 8, 2024, Allysha Caldwell 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.

Preliminary Matters

This hearing was initially scheduled to proceed on June 21, 2024, but could not proceed on that day because one of the public members on the Hearing Tribunal unexpectedly became unavailable before the hearing started. The original Hearing Tribunal was not seized with the matter because the hearing had not started, and the composition of the Hearing Tribunal changed for the August 23, 2024, hearing.

When the hearing proceeded on August 23, 2024, 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. Caldwell's absence. Section 72(1) of the Act states the investigated person must appear at a hearing before the Hearing Tribunal. However, section 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, section 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 Carol Collison, Hearings Director, as a witness in support of the Complaints Director's application to proceed in Ms. Caldwell's absence.

The Hearings Director testified she is responsible for arranging hearings. Her responsibilities include providing notices as requested by the Hearing Tribunal, the investigated person, or the

Complaints Director. The Hearings Director detailed her communications with Ms. Caldwell about this hearing.

The Hearings Director testified that on April 5, 2024, she sent Ms. Caldwell a letter by registered mail (Exhibit 1) and by email (Exhibit 3), enclosing the Notice of Hearing, Notice to Attend, and Notice to Produce, Part 4 of the Act, and the Hearing Steps and Procedures document being followed in this hearing.

The Hearings Director testified that members are required to maintain up-to-date contact information with the College and that members have 24-hour access to the College's online portal to update their contact information if it changes. On the morning of the hearing, the Hearings Director confirmed that Ms. Caldwell's contact information in the College's database was still as shown on the letter the Hearings Director sent her on April 5, 2024.

The Hearings Director identified the Canada Post tracking receipt indicating the letter enclosing the Notice of Hearing was sent to Ms. Caldwell on April 5, 2024, by registered mail (Exhibit 2), and the Canada Post delivery progress report indicating the letter was available for pick up from April 8, 2024, but was not picked up and was eventually returned unclaimed (Exhibit 4).

As for the email the Hearings Director sent on April 5, 2024, the Hearings Director testified that she received a bounce-back indicating that delivery failed because the recipient's mailbox was full (Exhibit 3).

The Hearings Director testified about her efforts to reach Ms. Caldwell by phone, which included calling her at the number in the College's database on March 20, 21, and 26, 2024. On each occasion, the Hearings Director reached a personalized voicemail recording that provided Ms. Caldwell's name, and on each occasion the Hearings Director left a message and asked Ms. Caldwell to call her back as soon as possible. On the second and third occasion, the Hearings Director specifically explained in her message that she was arranging the hearing and wanted to ensure Ms. Caldwell could actively participate. However, the Hearings Director received no response from Ms. Caldwell.

After the initial June 21, 2024, hearing date was adjourned, the Hearings Director sent Ms. Caldwell a letter with the updated Notice of Hearing by registered mail (Exhibit 5) and by email (Exhibit 7).

The Hearings Director identified the Canada Post tracking receipt indicating the letter enclosing the updated Notice of Hearing was sent to Ms. Caldwell on June 26, 2024, by registered mail (Exhibit 6), and the Canada Post delivery progress report indicating the letter was again returned to the College after not being picked up (Exhibit 8).

The Hearings Director testified that when she emailed Ms. Caldwell on June 26, 2024, attaching the updated Notice of Hearing, she again received a bounce back indicating that delivery failed because the recipient's mailbox was full (Exhibit 7).

The Hearings Director testified that she also tried to call Ms. Caldwell by phone on August 8, 2024, at the same number she had called previously, but reached a recording stating the

number was no longer in service. The Hearings Director testified this was the only number the College had for Ms. Caldwell.

Finally, the Hearings Director testified that on August 18, 2024, she sent Ms. Caldwell a link to join the new virtual hearing date but again received a bounce back indicating that delivery failed because the recipient's mailbox was full.

Submissions

Mr. Maxston submitted that the Hearings Director's evidence established that the Complaints Director had met her onus to show the hearing should proceed in Ms. Caldwell's absence, in accordance with section 79(6) of the Act.

Mr. Maxston emphasized that section 120(3) of the Act requires notices to be *sent* to the registered member by registered mail at their address as shown on the register or record of the registrar, and it is not necessary to prove the notice was *received*. Mr. Maxston also emphasised that regulated members are required to maintain up-to-date contact information with the College. In this case, Ms. Caldwell did not update her information between the first and second hearing dates and did not clear her inbox to make room to receive emails from the College.

Mr. Maxston submitted that the College went beyond what was required of it, in its many attempts to contact Ms. Caldwell by email and phone.

Mr. Maxston submitted that although the evidence shows that the updated Notice of Hearing was not received by Ms. Caldwell, under the Act it is deemed to be received, as it could not have been contemplated by the drafters of the Act that a regulated member could frustrate the process of notifying them by not keeping their contact information current.

Decision

The Hearing Tribunal considered the evidence and submissions carefully. Although the evidence established that Ms. Caldwell did not receive communication sent to her by the College about this hearing date, it was clear that the Hearings Director sent the Notice of Hearing to Ms. Caldwell by registered mail at the address in the College's database, satisfying the requirements of s. 120(3) of the Act. As such, the Hearing Tribunal granted the Complaints Director's application to proceed in the absence of the investigated person, in accordance with section 79(6) of the Act. The Hearing Tribunal also noted that the Hearings Director went above and beyond expectations in her efforts to bring this hearing to Ms. Caldwell's attention, both when it was originally scheduled for June 21, 2024, and when it was adjourned to August 23, 2024.

Evidence

Exhibits

Mr. Maxston entered the following exhibits, which included evidence relevant to the preliminary application to proceed in the member's absence (Exhibits 1-8) as well as the merits of the charges (Exhibits 9-12):

- Exhibit 1 April 5, 2024, notice of hearing letter from the Hearings Director to Ms. Caldwell 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 enclosures sent to Ms. Caldwell
- Exhibit 3 April 5, 2024, notice of hearing email from the Hearings Director to Ms. Caldwell, Outlook confirmation of email delivery, and Outlook confirmation of email undeliverable due to recipient's mailbox being full
- Exhibit 4 Registered mail delivery progress report and envelope showing registered mail sent on April 5, 2024, was returned May 24, 2024, marked "unclaimed"
- Exhibit 5 June 26, 2024, notice of hearing letter from the Hearings Director to Ms. Caldwell and enclosures: June 26, 2024, Notice of Hearing, Notice to Attend and Notice to Produce, Part 4 of the *Health Professions Act*, and Hearing Steps and Procedures
- Exhibit 6 Registered mail chit for June 26, 2024, notice of hearing letter and enclosures sent to Ms. Caldwell
- Exhibit 7 June 26, 2024, notice of hearing email from the Hearings Director to Ms. Caldwell, Outlook confirmation of email delivery, and Outlook confirmation of email undeliverable due to recipient's mailbox being full
- Exhibit 8 Registered mail delivery progress report and envelope showing registered mail sent on June 26, 2024, was returned July 31, 2024, marked "unclaimed"
- Exhibit 9 June 26, 2024, Notice of Hearing
- Exhibit 10 Investigation Report signed March 6, 2024, by the Complaints Director
- Exhibit 11 Files uploaded by Ms. Caldwell at the professional liability insurance step of her December 1, 2023, through November 30, 2024, annual practice permit renewal application
- Exhibit 12 December 15, 2023, email from Registration Manager to Ms. Caldwell and others (Ms. Caldwell's email address not redacted)

During the hearing, witnesses identified and spoke to 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 persons 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 with the College (referred to as “Registration Manager” in this decision) for just over one and a half years. She outlined her responsibilities on the registration side, which included overseeing the annual practice permit renewal process. 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 10).

The Registration Manager explained the College’s practice permit renewal process. Regulated members must renew their practice permit annually by November 30 of each year. The renewal process takes place online. Applicants are required to fill out an online form in which they must input their competence requirements for the current year, provide their Professional Liability Insurance (PLI) certificate for the current year, make various declarations, and pay the practice permit renewal fee.

Each year the college receives 6000 to 7000 practice permit renewal applications in October-November, most of which are received in the last two weeks of November. If an applicant successfully fills out the online form by completing all the required fields and paying the fee, their practice permit is renewed. Applications are subsequently audited to ensure applicants did in fact provide appropriate proof of PLI and meet continuing competence requirements.

The Registration Manager explained that PLI is malpractice insurance, which protects the regulated member and their patients if there are issues with care. In circumstances where a patient must be financially compensated for something that went wrong, PLI protects both the patient and the regulated member. As proof of PLI coverage, applicants typically submit a PLI certificate that indicates their name, the profession for which they are covered, coverage requirements, and the dates during which coverage is valid.

The Registration Manager testified that Ms. Caldwell submitted a practice permit renewal application for the 2023-2024 registration year and was granted a practice permit. However, when the Registration Manager subsequently reviewed Ms. Caldwell’s application, she found that Ms. Caldwell had not submitted a PLI certificate for the current year. Instead, Ms. Caldwell provided an undated screenshot of an email received from [REDACTED] (a PLI provider), and a copy of a PLI certificate that expired on December 1, 2023, for the previous registration year (Exhibit 11).

On December 15, 2023, the Registration Manager sent Ms. Caldwell and approximately 60 other regulated members who had not submitted appropriate proof of PLI coverage an email informing them they must provide a copy of their PLI certificate for December 1, 2023, to November 30, 2024, by no later than January 2, 2024 (Exhibit 12).

The Registration Manager testified that she sent the December 15, 2023, email to Ms. Caldwell using the email address Ms. Caldwell had provided with her contact information in the College’s portal, and the Registration Manager had no reason to believe Ms. Caldwell did not receive it.

The Registration Manager testified that she did not receive any response from Ms. Caldwell, and Ms. Caldwell did not upload proof of active PLI by the January 2, 2024, deadline. As such, the Registration Manager sent a letter to Ms. Caldwell on January 5, 2024, via regular mail, imposing a deadline of January 18, 2024, for Ms. Caldwell to upload her current PLI certificate (Exhibit 10). Again, Ms. Caldwell neither responded nor uploaded a current PLI certificate. Consequently, on January 30, 2024, the Registration Manager made a formal complaint to the Complaints Director, concerning Ms. Caldwell's failure to provide the required proof of PLI coverage for the 2023-2024 registration year (Exhibit 10).

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. Caldwell, and ultimately referred it to a hearing. Except where indicated otherwise, the documents the Complaints Director referenced in her testimony were included as appendices to her investigation report (Exhibit 10).

The Complaints Director testified as to the importance of PLI coverage, emphasizing that it protects the patient if the patient is harmed, but also protects the regulated member who might otherwise have to pay out of pocket, which can be financially devastating.

The Complaints Director testified that the College reminds regulated members about the PLI requirement several times leading up to the practice permit renewal deadline, by sending out notices. Examples of such notices, which are sent out as personalized emails, were included as appendices to the investigation report (Exhibit 10). Regarding the documents submitted by Ms. Caldwell with her practice permit renewal application, the Complaints Director testified that they were not adequate proof of PLI coverage, because they did not prove that Ms. Caldwell had PLI coverage that would be valid for the entire 2023-2024 registration year.

The Complaints Director testified about her investigation process, starting with the Notice of Investigation she sent to Ms. Caldwell by registered mail on February 2, 2024, using the contact information in the College's database. In her letter enclosing the Notice of Investigation, the Complaints Director asked Ms. Caldwell to respond to the allegations and provide proof of PLI coverage by February 20, 2024. With reference to Canada Post tracking reports, the Complaints Director testified that as of February 15, 2024, Ms. Caldwell had not claimed the letter and Canada Post issued a final notice that the item would be returned to sender if not collected in 10 days. The letter was not claimed and was returned to the College.

On February 15, 2024, after learning the letter had not been picked up, the Complaints Director sent a copy of her February 2, 2024, letter and enclosures to Ms. Caldwell by email, again using the contact information in the College's database. The Complaints Director testified that she received a delivery confirmation from Microsoft Outlook. Although the delivery confirmation did not confirm that the email was received, the Complaints Director had no reason to believe this particular email was not received by Ms. Caldwell.

The Complaints Director did not receive a response from Ms. Caldwell, nor did Ms. Caldwell upload a current PLI certificate.

The Complaints Director testified that she emailed Ms. Caldwell again on February 27, 2024, asking that she upload proof of PLI coverage by February 29, 2024, or the matter would be referred to a hearing. The Complaints Director testified that she sent the email because she wanted to try following up before taking a more heavy-handed approach. As with her previous email, the Complaints Director received a delivery confirmation from Microsoft Outlook, and although receipt was not confirmed the Complaints Director had no reason to believe her email was not received by Ms. Caldwell.

Again, the Complaints Director did not receive a response from Ms. Caldwell, nor did Ms. Caldwell upload a current PLI certificate.

The Complaints Director testified that she made a final attempt to contact Ms. Caldwell by email on March 4, 2024, this time advising Ms. Caldwell that if she did not upload proof of PLI coverage by March 7, 2024, the matter would be referred to a hearing. This time, the Complaints Director received a bounce-back message indicating Ms. Caldwell's mailbox was full and could not accept messages. This was the first time the Complaints Director received a bounce-back like this from Ms. Caldwell's email address. At no point did Ms. Caldwell update her contact information with the College.

The Complaints Director referred the matter to a hearing on March 7, 2024, after Ms. Caldwell failed to respond or to upload proof of current PLI coverage.

Submissions

In his submission on behalf of the Complaints Director, Mr. Maxston submitted that the onus was on the Complaints Director to prove the facts as alleged and to prove that the facts give rise to unprofessional conduct. Mr. Maxston submitted the Hearing Tribunal should apply the civil standard of proof, which requires the Complaints Director to prove the allegations on a balance of probabilities.

On the question of whether unprofessional conduct has occurred, Mr. Maxston emphasized the role of the College to govern its regulated members in a manner that protects and serves the public interest. Mr. Maxston submitted the College does this in many ways, and that regulated members have higher obligations in terms of professional and personal accountability, but these obligations are proportionate to the benefits of being a member of the profession.

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 the Hearing Tribunal could use these sections of the Act as tools to measure Ms. Caldwell'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. Caldwell 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 regulated members 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 regulated members to maintain the level of professional liability insurance required by the College Council; and
- Article 12 of the Bylaws, which set out what a regulated member 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. Caldwell applied for practice permit renewal, she did not provide adequate proof of PLI coverage and still had not done so by March 8, 2024, despite many opportunities to do so.

With respect to Charge 2, which alleged that Ms. Caldwell 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 regulated members 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."

Mr. Maxston highlighted the evidence of multiple efforts to contact Ms. Caldwell, by the Hearings Director, the Registration Manager, and the Complaints Director. He also emphasized that prior to March 4, 2024, when the Complaints Director first received a bounce-back indicating Ms. Caldwell's mailbox was full, there was no indication that email communications to Ms. Caldwell were not delivered. Mr. Maxston submitted that the onus lies squarely on regulated members to update their contact information, and the failure of a member to do so cannot be held against the College.

Mr. Maxston submitted that both allegations were factually proven and amounted to unprofessional conduct.

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

Findings

After carefully reviewing and considering all of the exhibits and testimony, and all of 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, Allysha Caldwell failed to provide the required proof of the type and amount of professional liability insurance as required in the *Health Professions Act*, the College of Alberta Dental Assistants (“College”) Standards of Practice and the College’s Bylaws, despite having renewed and maintained an active practice permit.

The Hearing Tribunal finds that Charge 1 is factually proven and amounts to unprofessional conduct.

The evidence presented during the hearing clearly established that Ms. Caldwell did not provide the required proof of PLI coverage for the 2023-2024 registration year, either at the time she submitted her practice permit renewal application or in response to the College’s repeated requests that she do so.

Section 40(1)(c) of the Act requires regulated members 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 documents Ms. Caldwell uploaded with her practice permit renewal application did not meet the above requirements. She provided her PLI certificate from the 2022-2023 registration year, and an undated screenshot from ██████ stating “Hello, Allysha: Thank you for purchasing your coverage through ██████” It was not possible to determine, based on what Ms. Caldwell provided, whether she had in fact purchased PLI coverage for the 2023-2024 registration year, let alone whether she had current PLI coverage that met the requirements set out in Article 12 of the Bylaws.

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 requirements for proof of PLI coverage are set out in detail in the Bylaws. Further, the College regularly reminds regulated members of their obligation to provide proof of PLI coverage as part of their practice

permit renewal application. After Ms. Caldwell's 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, and yet she failed to do so. When the Hearing Tribunal considered all these factors, they were satisfied that Ms. Caldwell's failure to provide proof of PLI coverage, either at the time she submitted her practice permit renewal application, or afterwards, rose to the level of unprofessional conduct. Her conduct reflects a lack of judgment (s. 1(1)(pp)(i)), 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 8, 2024, Allysha Caldwell 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 finds that Charge 2 is factually proven and amounts to unprofessional conduct.

The evidence of the Registration Manager and the Complaints Director established that College personnel attempted to communicate with Ms. Caldwell repeatedly between December 15, 2023, and March 8, 2024, without receiving any response. This started with the Registration Manager's December 15, 2023, email to Ms. Caldwell and other regulated members who had not submitted adequate PLI proof, giving them a deadline of January 2, 2024, to upload a current PLI certificate. On January 5, 2024, after Ms. Caldwell neither complied nor responded, the Registration Manager sent her a further letter, giving her a new deadline of January 18, 2024. On January 30, 2024, after Ms. Caldwell again neither complied nor responded, the matter was referred to the Complaints Director.

The Complaints Director sent a Notice of Investigation to Ms. Caldwell by registered mail on February 2, 2024, and by email on February 15, 2024, after receiving notice that the registered mail was not claimed. After receiving no response, the Complaints Director emailed Ms. Caldwell again on February 27, 2024, and March 4, 2024, giving her further opportunities to respond to the College's communications, address her failure to provide adequate PLI proof (the subject of Charge 1), and avoid a disciplinary hearing. The Complaints Director used the email address in the College's database, which had been provided by Ms. Caldwell and was not changed or updated at any time relevant to these proceedings. In response to her March 4, 2024, email, the Complaints Director received a bounce-back indicating that Ms. Caldwell's mailbox was full and could not receive messages.

The College's Code of Ethics and Standards of Practice provide clear expectations about regulated members' communication, not only with patients but also with College personnel. It is a fundamental expectation that regulated members respond promptly and professionally to all types of communication from the College. Failure to do so shows a lack of respect for the

College and undermines the proper regulation of the dental assisting profession. It should not take multiple letters and emails from the College before a regulated member responds; however, when a regulated member fails to respond to multiple attempts to contact her, the failure is all the more concerning.

The Hearing Tribunal recognizes the possibility that Ms. Caldwell did not receive any of the College's communications, if for example she was no longer using the mailing address or email address she had previously provided to the College. However, it was her responsibility to update her contact information with the College if it changed, so this would not excuse her failure to respond to the College's attempts to communicate with her.

Ms. Caldwell's failure to respond breaches Indicator 6.2(c) of the College's Code of Ethics which requires dental assistants to communicate with the College in a professional and timely manner. This includes giving timely attention and appropriate professional response to correspondence, communications and requests from the College. By contravening the Code of Ethics, Ms. Caldwell's conduct amounts to unprofessional conduct as defined in s. 1(1)(pp)(ii) of the Act. Further, her conduct reflects a serious lack of judgment (s. 1(1)(pp)(i)) and harms the integrity of the profession as a whole (s. 1(1)(pp)(xii)).

Finally, Ms. Caldwell's failure to respond to the Complaints Director acting as an investigator under Part 4 of the Act also amounts to unprofessional conduct within the meaning of s. 1(1)(pp)(vii)(B), which provides that unprofessional conduct includes a failure or refusal to comply with a request of or cooperate with an investigator. Not only does an investigator have explicit statutory authority under Part 4 of the Act to require a person to answer relevant questions, but regulated members have a professional obligation to cooperate with their regulatory body. Ms. Caldwell's failure to do so clearly amounts to unprofessional conduct.

Submissions Regarding Penalty

After the Hearing Tribunal indicated that the allegations were proven, Mr. Maxston indicated the Complaints Director was prepared to proceed with submissions on penalty.

Mr. Maxston submitted the Hearing Tribunal has the authority under section 82 of the Act to make three types of orders: (1) general orders; (2) orders requiring payment of the costs of the investigation and hearing; and (3) fines.

Mr. Maxston referred to the Court's decision in *Jaswal v Newfoundland Medical Board*, and the factors relevant in assessing penalty in the professional discipline context. His submissions on the relevant factors from the *Jaswal* decision were as follows:

- **Nature and gravity of proven conduct** – With respect to Charge 1, Mr. Maxston submitted that when a regulated member does not have current PLI, it poses significant risks to the regulated member and to the public. With respect to Charge 2, Mr. Maxston submitted that there is a significant risk when a regulated member has no communication with their regulator.

- **Number of times offence was proven to occur** – The proven allegations reflect repeated efforts by College personnel to communicate with Ms. Caldwell, all of which went unanswered.
- **Member’s role in acknowledging what occurred** – Ms. Caldwell has chosen to withdraw herself from the hearing process and College administration altogether, by not providing the College with her current contact information.
- **The need to promote specific and general deterrence** – The Hearing Tribunal’s orders must deter Ms. Caldwell, specifically, and the profession, generally, from engaging in similar conduct.
- **The need to maintain the public’s confidence in the regulation of the profession** – The importance of PLI is reflected in the requirements set out in legislation. The public should be able to rely on regulated members to meet these requirements. Meanwhile, the expectation that regulated members engage in timely communication with the College is a simple, straightforward expectation. Failure to complete such requirements harms the integrity of the profession in the eyes of the profession.

On this basis, Mr. Maxston asked the Hearing Tribunal to reprimand Ms. Caldwell, with the Hearing Tribunal’s written decision serving as the reprimand. Mr. Maxston also asked the Hearing Tribunal to suspend Ms. Caldwell’s practice permit until she (1) complies with all PLI requirements at the time she seeks reinstatement, and (2) completes the Code of Ethics module available through the College’s Learning Centre for regulated members. Finally, Mr. Maxston asked that the decision be published on the College’s website for five years and identify Ms. Caldwell by name.

In response to questions from the Hearing Tribunal, Mr. Maxston confirmed that the Complaints Director was not asking the Hearing Tribunal to order Ms. Caldwell to pay any of the costs of the investigation or hearing. Mr. Maxston submitted that the particular penalties sought by the Complaints Director were primarily focused on educational purposes rather than punitive purposes. Mr. Maxston noted this was the first time Ms. Caldwell had faced unprofessional conduct proceedings. The penalties sought by the Complaints Director would allow Ms. Caldwell to learn more about her ethical obligations, including the PLI requirement, and would provide her with an opportunity to re-enter practice. Mr. Maxston also submitted that the Alberta Court of Appeal’s decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, set a “fairly high bar” concerning the circumstances where it is appropriate to order costs. Finally, Mr. Maxston referenced the challenges of collecting a costs order from a regulated member in these circumstances as a factor in the Complaints Director’s decision not to seek a costs order.

Penalty Orders

The Hearing Tribunal recognizes that any penalty orders it makes must be fair, reasonable and proportionate taking into account the facts of this case.

Decision

The Hearing Tribunal considered the submissions on behalf of the Complaints Director and also carefully reviewed its authority under the *Health Professions Act* concerning the making of penalty orders.

With a minor adjustment to the conditions for reinstatement of Ms. Caldwell's practice permit, the Hearing Tribunal accepted the penalties proposed by the Complaints Director, which were proportionate to Ms. Caldwell's conduct and consistent with penalties imposed in similar cases.

The Hearing Tribunal agreed that Ms. Caldwell's conduct warranted a reprimand, with this decision serving as the reprimand.

Because it is unknown if Ms. Caldwell currently holds the required PLI coverage, the Hearing Tribunal agreed it was necessary to immediately suspend her practice permit, to protect the public. Given Ms. Caldwell's total lack of participation in this process, is unclear when or if Ms. Caldwell may seek reinstatement. As such, although the Complaints Director had proposed that Ms. Caldwell be suspended until she complied with all PLI requirements in place at the time she seeks reinstatement, the Hearing Tribunal considered it important to clarify that Ms. Caldwell must meet *all* practice permit renewal requirements in effect when or if she seeks to reinstate her practice permit. The Hearing Tribunal agreed with the Complaints Director's proposal that Ms. Caldwell also be required to complete the Code of Ethics module in the College's Learning Centre before her practice permit may be reinstated. A review of her ethical and professional obligations may help Ms. Caldwell to avoid making similar mistakes in the future.

As for publication of this decision on the College's website with Ms. Caldwell's name, the Hearing Tribunal agrees that publication provides accountability and transparency to the public.

Given that the Complaints Director is not seeking an order requiring Ms. Caldwell to pay a portion of investigation and hearing costs, the Hearing Tribunal makes no order as to costs.

Accordingly, the Hearing Tribunal made the following orders:

1. Ms. Caldwell shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Ms. Caldwell's practice permit is suspended effective August 23, 2024, and shall remain suspended until she has:
 - a. complied with all outstanding practice permit renewal requirements in effect at the time Ms. Caldwell seeks to reinstate her practice permit; and
 - b. completed the Code of Ethics module in the College's Learning Centre and provided proof of successful completion to the Complaints Director.

If the Code of Ethics module is no longer available, then Ms. Caldwell may make a written request to the Complaints Director to approve an alternate course, and the Complaints Director will have sole discretion to approve an alternate course that addresses a dental assistant's ethical obligations with respect to their regulatory body. If

there are any costs associated with such alternate course, Ms. Caldwell shall be responsible for the costs of the alternate course.

3. The Hearing Tribunal's decision shall be published on the College's website for a period of five years from the date of this decision, and the published decision shall name Ms. Caldwell.

Dated at the City of Edmonton, in the Province of Alberta, on the 22 day of October, 2024.

Signed on Behalf of the Hearing Tribunal

by its Chairperson

Nicole Bartindale

Ms. Nicole Bartindale, RDA