

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 JESSICA GRIMMON (REGISTRATION NUMBER 9788),
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 in person on July 5, 2022.

In attendance on behalf of the Hearing Tribunal were:

Wanda Walker, RDA	Chairperson
Caitlin Asel, RDA	Member
James Lees	Public Member
Patricia Matusko	Public Member

In attendance at the hearing were Mr. Blair 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. Grimmon, the investigated member, was not in attendance.

Allegations

The Allegations were set out in a Notice of Hearing dated May 5, 2022 alleging Ms. Grimmon engaged in unprofessional conduct with respect to the following matters:

1. On or about October 27, 2021 through to March 31, 2022 you failed to comply with the requirements of the College's Patient Relations Program.
2. On or about November 23, 2021 you made a false declaration on your 2022 Practice Permit Renewal Application by declaring you had passed the Patient Relations Module when you had not done that.
3. On or about January 17, 2022 through March 31, 2022 you failed to respond and/or failed to respond promptly and/or failed to respond meaningfully to communications from the College concerning your completion of the Patient Relations Program, contravening Article 6.2(c) of the College's Code of Ethics and Standard of Practice 6.2(g) of the College's Standards of Practice.
4. On or about February 17, 2022 through March 31, 2022 you failed and/or failed to meaningfully cooperate with an investigator appointed pursuant to Part 4 of the *Health Professions Act*, which contravenes section 63(1) of the *Health Professions Act*.

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. Grimmon'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."

In this case, as discussed below, the Hearings Director sent the *Notice of Hearing, Notice to Attend, and Notice to Produce* to Ms. Grimmon by email rather than sending it by registered mail. Ms. Grimmon never responded to confirm she received it. The Hearing Tribunal spent a significant amount of time (i.e., the first two hours of the hearing) hearing evidence and submissions as to whether Ms. Grimmon had been adequately notified of the hearing.

Evidence

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

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. Grimmon about this hearing.

The Hearings Director first emailed Ms. Grimmon on April 19, 2022 (Ex. 8), regarding the Complaints Director's referral of the complaint against Ms. Grimmon to a hearing. The Hearings Director explained she would be making arrangements for the hearing and was planning for a one-day hearing to take place in Edmonton. The Hearings Director requested Ms. Grimmon's availability on July 5 or 6, 2022. The Hearings Director also stated the following in her email:

I prefer to communicate with you about the hearing by email, as it's much quicker than mail. Please confirm whether your email address (<email 1>) is secure, and whether you have any concerns with me communicating with you by email at this address only.

Ms. Grimmon responded to the Hearings Director by email on April 21, 2022. Her full response (Ex. 8) was as follows:

I am no longer in the dental field and will never practice as an assistant again. My passions in life have led me down a completely different path.

I am alright with no longer being licensed in this field and will not be participating in this hearing.

thanks and have a great day, God bless!

The Hearings Director responded to Ms. Grimmon on April 21, 2022 (Ex. 8), stating:

Whether or not you participate, the hearing must take place. Throughout the planning and hearing there is information I must give you. As I mentioned below [i.e., in the previous email], I prefer to communicate with you by email. **By April 22, 2022**, please confirm whether your email address (<email 1>) is secure, and whether you have any concerns with me communicating with you by email at this address only.

Ms. Grimmon's full response (Ex. 8) was as follows:

yes this email is secure

please continue

After this response, which Ms. Grimmon sent on April 21, 2022, there was no evidence of further communication by Ms. Grimmon to the College.

On April 28, 2022, Mr. Maxston sent a letter to Ms. Grimmon by email at <email 1> (Ex. 9). In the letter, Mr. Maxston indicated he acted as legal counsel for the Complaints Director of the College. He noted Ms. Grimmon's statements to personnel at the College that she did not intend to participate in the hearing, and informed Ms. Grimmon of the Hearing Tribunal's ability to proceed in the absence of the investigated person under section 79(6) of the Act. Mr. Maxston explained that if the Complaints Director was required to make a preliminary application to proceed in Ms. Grimmon's absence, it would result in additional time and expense for the College. As such, Mr. Maxston asked if Ms. Grimmon was prepared to agree in advance of the hearing that it could proceed in her absence. Ms. Grimmon did not respond to Mr. Maxston's April 28, 2022 correspondence. The Hearing Tribunal was not provided with any evidence confirming Ms. Grimmon received it.

On May 9, 2022, the Hearings Director sent a *Notice of Hearing, Notice to Attend and Notice to Produce* to Ms. Grimmon by email at <email 1> (Ex. 10). The Hearings Director testified she received confirmation from the system that the email was sent and did not receive any bounce back errors. However, the Hearings Director did not receive any response from Ms. Grimmon.

The Hearings Director did not send the *Notice of Hearing, Notice to Attend and Notice to Produce* by registered mail. The Hearings Director explained she had not sent it by registered mail as a matter of convenience. If a member agrees to correspond by email, the Hearings Director does so. If the member does not agree, the Hearings Director proceeds by registered mail. In this case, Ms. Grimmon indicated she was willing to correspond by email, so that is what the Hearings Director did. Although Ms. Grimmon did not confirm receipt of the *Notice of Hearing, Notice to Attend and Notice to Produce*, the Hearings Director relied on the email delivery confirmation and the fact the College previously had success in corresponding with Ms. Grimmon at this email address.

On May 25, 2022, Mr. Maxston provided the Hearings Director with a copy of his April 28, 2022 correspondence to Ms. Grimmon (Ex. 11), stating he anticipated entering it as an exhibit at the hearing as part of a section 79(6) application to proceed in the absence of the member.

The College's Complaints Director, Ms. vander Heide, also testified. The Complaints Director investigated the allegations against Ms. Grimmon. During the investigation, the Complaints Director sent Ms. Grimmon a formal *Notice of Investigation* setting out the allegations under investigation by registered mail. A copy of the Complaints Director's letter enclosing the *Notice of Investigation* is found at Appendix 2 of the Investigation Report (Ex. 6). A copy of Canada Post's confirmation of delivery to Ms. Grimmon is found at Appendix 3.

The Complaints Director testified that the allegations against Ms. Grimmon during the investigation stage were basically the same as the allegations ultimately referred to a hearing. The main differences

were the allegations referred to a hearing included specific dates, and also included an allegation that Ms. Grimmon failed and/or failed to meaningfully cooperate during the investigation.

Submissions

Upon the conclusion of the evidence, Mr. Maxston made submissions to the Hearing Tribunal as to why the hearing should proceed in Ms. Grimmon's absence. Mr. Maxston stressed he did not want to oversimplify or minimize the significance of the Panel's concerns about whether Ms. Grimmon had adequate notice of the hearing. However, Mr. Maxston submitted section 79(6) of the Act was designed to deal with this specific situation where a member has said, candidly, openly, and honestly, that they are not going to participate. Mr. Maxston emphasized that documents were initially sent to Ms. Grimmon by registered mail, in accordance with section 120(3) of the Act, until the Hearings Director specifically put it to Ms. Grimmon whether she would accept documents by email instead.

Mr. Maxston also explained that during the investigation stage, the facts are unknown and information is being gathered; the College does not always have a clear idea as to the exact allegations that will emerge from the investigation. As the investigation progresses, more information is gathered and allegations are refined. In this case, however, Mr. Maxston submitted the allegations put to Ms. Grimmon during the investigation were not significantly different than the charges that were ultimately set out in the *Notice of Hearing*.

Decision

The Hearing Tribunal considered the evidence and submissions carefully. In the Hearing Tribunal's view, it would have been better for the Hearings Director to send the *Notice of Hearing*, *Notice to Attend and Notice to Produce* by registered mail after Ms. Grimmon did not confirm receipt via email.

However, the Hearing Tribunal was satisfied that Ms. Grimmon agreed to receive correspondence from the Hearings Director by email. More critically, the Hearing Tribunal was satisfied that Ms. Grimmon had been clearly informed of the allegations against her when she told the Hearings Director she did not intend to participate in the hearing, because the charges set out in the *Notice of Hearing* were substantially similar to the allegations set out in the *Notice of Investigation*, which the evidence established Ms. Grimmon received during the investigation stage.

Given Ms. Grimmon's clear statements that she did not intend to participate in the hearing, the Hearing Tribunal was of the view there was nothing to be gained by adjourning the proceedings so the *Notice of Hearing* could be sent to Ms. Grimmon by registered mail at this point. 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.

Evidence

Mr. Maxston entered a master binder of exhibits, with evidence relevant to the preliminary application to proceed in the member's absence as well as the merits of the charges, as follows:

- Exhibit 1 October 27, 2021 email – "CADA – We issued your registration and practice permit"
- Exhibit 2 November 2, 2021 email – "Renew your Practice Permit – Reminder from the College"
- Exhibit 3 November 16, 2021 email – "Refresh your learning"
- Exhibit 4 November 23, 2021 email – "Renew your Practice Permit by November 30 – Reminder from the College"
- Exhibit 5 January 17 and 23, 2021 emails from Registrar to Ms. Grimmon – "action required – compliance with practice permit renewal declaration"

- Exhibit 6 Investigation Report
- Exhibit 7 March 31, 2022 Notification of Referral to a Hearing Letter from Complaints Director to Ms. Grimmon
- Exhibit 8 April 19-21, 2022 emails between Ms. Grimmon and Hearings Director
- Exhibit 9 April 28, 2022 email and attached letter to Ms. Grimmon from Blair Maxston, legal counsel for Complaints Director
- Exhibit 10 May 5, 2022 email enclosing *Notice of Hearing, Notice to Attend, and Notice to Produce*
- Exhibit 11 May 25, 2022 email from Mr. Maxston to Hearings Director regarding preliminary application to proceed in absence of member

During the course of 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:

Jennifer Tewes, Registrar

Susan vander Heide, Complaints Director

Evidence of the Registrar

The Registrar testified about the College's Patient Relations Module. As a result of amendments to the Act in 2018, the College was required to establish a patient relations program with measures for preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members.

The College created the Patient Relations Module in 2019 to satisfy the requirements of the Act, as part of the College's annual renewal process. At that time, the College communicated to members that all members were required to complete it. Completing the Patient Relations Module is a one time requirement, which members must complete before their first renewal. The Registrar testified it takes approximately three hours to complete the Patient Relations Module, and it does not need to be completed in one sitting.

The Registrar explained that the College's practice permit renewal application form identifies completion of the Patient Relations Module as a mandatory requirement and includes a checkbox for the member to indicate whether they have completed it. The form includes a separate checkbox for the member to declare everything in their application is accurate.

The Registrar testified about the College's communication to members, including to Ms. Grimmon specifically, about the requirement to complete the Patient Relations Module.

Ms. Grimmon reinstated her practice permit in fall 2021, after several years out of practice. The College emailed her on October 27, 2021 confirming her registration application was approved (Ex. 1). Among other things, the email informed Ms. Grimmon she would need to complete the Patient Relations Module before her first renewal and provided information about how to access it via the College's Professional Practice Learning Centre. Practice permits must be renewed on or before November 30 each year.

On November 2, 2021, the College sent a renewal reminder email to all members, including Ms. Grimmon (Ex. 2). The reminder email included a link to "important information" about renewing one's practice permit and a link to the College's "Guide for Online Annual Practice Permit Renewal". Both links led to content that reiterated the requirement to complete the Patient Relations Module before renewing.

On November 16, 2021, the College's president sent an email message to all members, including Ms. Grimmon, which referenced the requirement to complete the Patient Relations Module before renewing one's practice permit (Ex. 3).

On November 23, 2021, the College sent a renewal reminder email to all members who had not yet completed a practice permit renewal application (Ex. 4). The email included the same two links as the November 2, 2021 email, which led to reminders of the requirement to complete the Patient Relations Module before renewing.

As discussed further below, Ms. Grimmon submitted a renewal application on November 23, 2021 (Ex. 6 – Appendix 1), in which she checked "Yes" to the following statements:

I have completed the Patient Relations Module. I fully understand that failure to comply may result in cancellation or suspension of my Registration and/or Practice Permit, and subsequent notification pursuant to statutory requirements.

And:

I certify that the information given and made part of this application is true and correct in every aspect.

The Registrar testified that members answer these questions on the honour system when they complete their renewal application. It is extremely important for members to provide accurate information on their renewal applications because the Registrar relies on the information members provide to determine whether members are complying with the registration requirements under the Act. Nevertheless, at the beginning of each year, College staff go through to see who has actually completed the Patient Relations Module. The Registrar testified Ms. Grimmon had not completed it.

On January 17, 2022, the Registrar emailed Ms. Grimmon to inform her the College was unable to find evidence Ms. Grimmon completed the Patient Relations Module (Ex. 5). The Registrar gave Ms. Grimmon a deadline of February 4, 2022 to complete the Patient Relations Module and reminded Ms. Grimmon that making a false declaration on an application to the College may be viewed as unprofessional conduct. The Registrar advised Ms. Grimmon if she did not complete the Patient Relations Module by February 4, 2022, she may be referred to the Complaints Director. The Registrar did not receive a response and sent a follow up and final reminder on January 31, 2022 (Ex. 5). The Registrar sent both emails to <email >, which was the only email on file for Ms. Grimmon at that point. The Registrar did not receive any bounce backs. The Registrar testified she had used this same email address to support Ms. Grimmon through the reinstatement process in October 2021.

The Registrar testified Ms. Grimmon had not completed the Patient Relations Module by February 4, 2022. As such, on February 8, 2022, the Registrar made a formal complaint to the Complaints Director under Part 4 of the Act (Ex. 6 – Appendix 1).

Evidence of the Complaints Director

The Complaints Director testified as to what happened after she received the complaint about Ms. Grimmon, with reference to the Investigation Report (Ex. 6). The Complaints Director sent a *Notice of Investigation* (Ex. 6 – Appendix 1) to Ms. Grimmon by registered mail on February 17, 2022 (Ex. 6 – Appendix 2), which Ms. Grimmon signed for on February 21, 2022 (Ex. 6 – Appendix 3). The *Notice of Investigation* identified the following allegations against Ms. Grimmon:

That Jessica Grimmon made a false declaration on her 2022 practice permit renewal concerning completion of the Patient Relations Module.

That Jessica Grimmon failed to complete the requirements for her 2022 practice permit renewal, specifically failure to complete the Patient Relations Module.

That Jessica Grimmon failed to respond to College final notice to complete the Patient Relations Module no later February 4, 2022 sent by email on January 31, 2022.

That Jessica Grimmon displayed a lack of judgment in the practice of dental assisting in the above related matters.

In the Complaints Director's covering letter, the Complaints Director requested Ms. Grimmon's written explanation respecting the matters listed in the *Notice of Investigation* by no later than March 18, 2022. The Complaints Director noted that Ms. Grimmon's reply should be "fully detailed and include copies of all supporting documents, if applicable."

The Complaints Director testified about a series of emails between her and Ms. Grimmon in March 2022 (Ex. 6 – Appendix 4). On March 17, 2022, Ms. Grimmon emailed the Complaints Director asking to change her sign-in email to <email 1> so she could complete the Patient Relations Module. The Complaints Director responded approximately 10 minutes later, advising Ms. Grimmon she had changed her email and reset her password, and if Ms. Grimmon could complete the Patient Relations Module by the end of the day on March 18, 2022, the Complaints Director would waive the late fee.

Ms. Grimmon replied on March 22, 2022 stating she was still having issues signing in, and advising:

Also please note i am no longer working in the dental field, i have switched careers entirely. Keeping my license is merely so it doesn't go to waste if i ever choose to come back to dental

The Complaints Director responded approximately 15 minutes later advising Ms. Grimmon she was still required to complete the Patient Relations Module if she had an active practice permit. The Complaints Director stated, "This is required under the Health Professions Act and is not an option." The Complaints Director suggested steps Ms. Grimmon could try to sign in to access the Patient Relations Module, noting the Complaints Director had been able to sign in using Ms. Grimmon's email address and the password provided.

Ms. Grimmon did not respond to the Complaints Director's email providing suggestions on how Ms. Grimmon could access the Patient Relations Module. The Complaints Director testified there was no evidence of Ms. Grimmon ever signing in or attempting the Patient Relations Module. In response to a question from the Hearing Tribunal, the Complaints Director advised that if Ms. Grimmon had attempted to sign in and was partially successful, it would show up on her account with the College. However, nothing shows up on Ms. Grimmon's account.

The Complaints Director stated Ms. Grimmon's responses (when she did respond) were cavalier as though this was not a serious and pressing matter. The Complaints Director also emphasized that during the investigation Ms. Grimmon was given a number of chances and opportunities to complete the Patient Relations Module and did not follow through.

On March 31, 2022, the Complaints Director notified Ms. Grimmon the investigation was completed and the Complaints Director had referred the matter to the Hearings Director for a formal hearing (Ex. 7). The Complaints Director sent the notice by registered mail and email.

In her evidence, the Complaints Director also provided information about the Patient Relations Module. She emphasized it was a requirement under section 135.7 of the Act for every college to set up, as part of the college's patient relations program, an educational component for members on recognizing and

addressing sexual abuse of and misconduct towards patients. The Patient Relations Module was how the College chose to address this requirement. It is specific to dentistry and is mandatory for members.

The Complaints Director explained the Patient Relations Module is on an educational platform called Moodle. It consists of a series of units; participants must pass a quiz for each unit to move to the next and ultimately access the final exam. Each unit includes a narrated PowerPoint, a podcast, a PDF to download, and a knowledge check or quiz. The final exam includes random questions from each unit, scrambling which questions a participant gets each time. The time commitment to complete the Patient Relations Module is generally about three hours. There is no cost to the individual member to do the Patient Relations Module.

With respect to the importance of the Patient Relations Module, the Complaints Director emphasized it is a requirement in legislation, and the 2018 amendments to the Act were spurred by a very serious issue: preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated health professionals.

With respect to the importance of regulated members cooperating with the College, the Complaints Director noted the College has a responsibility to protect the public and when professionals do not cooperate with the College it hinders the College's ability to protect the public.

Submissions

In his submissions, Mr. Maxston emphasized there were two onuses on the Complaints Director in this hearing: first, to establish on a balance of probabilities that the alleged facts are proven, and second, to establish on a balance of probabilities the proven facts rise to the level of unprofessional conduct.

On the first issue of whether the facts are proven on a balance of probabilities, Mr. Maxston submitted that because Ms. Grimmon was not present, the facts are essentially uncontradicted. In summary, Mr. Maxston submitted the evidence established the following:

- Ms. Grimmon did not complete the Patient Relations Module.
- Completing the Patient Relations Module is clearly a requirement.
- On Ms. Grimmon's renewal application, Ms. Grimmon falsely stated she had completed the Patient Relations Module.
- There was a lack of meaningful, timely or (at times) any communication from Ms. Grimmon when the College tried to engage with her about the requirement to complete the Patient Relations Module, both before and after the matter was referred to the Complaints Director.

On the second issue, of whether the factual conduct rose to the level of unprofessional conduct, Mr. Maxston emphasized the Complaints Director's evidence about the importance of members meeting mandatory requirements such as completing the Patient Relations Module, and the Registrar's evidence about the College's reliance on members' declarations as to meeting those requirements. Mr. Maxston submitted it was troubling that Ms. Grimmon abandoned the requirement to complete the Patient Relations Module as well as the respect she owed her regulator. Mr. Maxston submitted that the documentary evidence shows an active College reaching out to a member and trying to help the member meet the requirements. Ms. Grimmon was not abandoned by her College, and members paying fees to the College can be proud of the College's efforts. Mr. Maxston submitted that even if a person is not practicing, if they have the seal of approval from a college that says they are a member of that college, they must comply with the college's requirements.

Mr. Maxston also referred to cases that emphasized the importance of regulated members cooperating with their regulatory body. For example, in *Ontario (College of Physicians and Surgeons of Ontario) v Savic*, 2019 ONCPSD 40, the Discipline Committee of the College stated, “The privilege of professional regulation depends on members’ willingness to be governed in the public interest and to abide by the directions of the College.” And in *Law Society of Upper Canada v Paul William Slocombe*, 2012 ONLSHP 22 at para 28, the Law Society Hearing Panel stated, “Without compliance, the Law Society is unable to fulfil its role of protecting the public.” Both these cases were focused on the issue of ungovernability. During the penalty phase of these proceedings, Mr. Maxston clarified he was not asking the Hearing Tribunal to make a finding of ungovernability, and the Hearing Tribunal makes no such finding.

In summary, Mr. Maxston submitted the Complaints Director had met her onus to establish on a balance of probabilities the alleged conduct was factually proven and that the factually proven conduct rose to the level of 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 October 27, 2021 through to March 31, 2022 you failed to comply with the requirements of the College’s Patient Relations Program.

The Hearing Tribunal finds to comply with the requirements of the College’s Patient Relations Program, a Dental Assistant must successfully complete the Patient Relations Module before renewing their practice permit. Further, the Hearing Tribunal finds this was communicated to Ms. Grimmon when she reinstated her registration and practice permit on October 27, 2021 after a long absence from the profession. Further emails were sent to Ms. Grimmon on November 2, 16 and 23, 2021 at the email address the College had on file, each of which referenced or specifically reiterated the requirement to complete the Patient Relations Module before the November 30 renewal deadline. On January 17 and 31, 2022, the Registrar emailed Ms. Grimmon at the email address the College had on file notifying her the College was unable to find evidence that Ms. Grimmon had completed the Patient Relations Module, and that she was required to do so by February 4, 2022, failing which the matter would be referred to the Complaints Director.

The Hearing Tribunal finds once the matter was referred to the Complaints Director, Ms. Grimmon was given further opportunities to complete the Patient Relations Module. At Ms. Grimmon’s request, the Complaints Director updated Ms. Grimmon’s email address on file and provided Ms. Grimmon with a new password to sign in and complete the Patient Relations Module. When Ms. Grimmon was still having trouble signing in, the Complaints Director tried the new sign-in information, found that it worked, and offered Ms. Grimmon some suggestions of steps she could take. However, after the Complaints Director offered these suggestions on March 22, 2022, there was no follow up from Ms. Grimmon.

The Hearing Tribunal accepts there was no evidence of Ms. Grimmon ever signing in, or even having partial success attempting to sign in, to attempt the Patient Relations Module. As such, the Hearing Tribunal finds this allegation is factually proven on a balance of probabilities: Ms. Grimmon did not comply with the requirements of the College’s Patient Relations Program.

Further, the Hearing Tribunal finds the factually proven conduct rises to the level of unprofessional conduct.

The Act requires the College to establish a patient relations program with educational requirements for regulated members aimed at preventing and addressing sexual abuse of and sexual misconduct towards patients by regulated members. This is the purpose of the Patient Relations Module and it is mandatory.

Dental Assistants are expected to demonstrate accountability by knowing and complying with the legislation applicable to the dental assisting profession and the Standards of Practice, Code of Ethics, and policies and guidelines of the College (Code of Ethics, Article 3.1(b)). Dental Assistants are also expected to maintain competence by accepting responsibility for knowing and acting consistently with the legislation, standards and principles that pertain to the profession and to the practice setting (Code of Ethics, Article 5.1). By failing to comply with the requirements of the College's Patient Relations Program, Ms. Grimmon failed to meet these expectations.

Practicing as a Dental Assistant is a privilege, and this privilege requires Dental Assistants to meet standards for continuing to practice (Standard of Practice 2.1). Although completing the Patient Relations Module is an important requirement, it is not an onerous one. There is no cost to the individual member, and the time commitment is approximately three hours, which can be done in multiple sittings. After a lengthy absence from the profession, Ms. Grimmon was required to complete the Patient Relations Module before renewing her practice permit for the first time. She had numerous opportunities and ample support from the College to at least attempt the Patient Relations Module and did not do so.

Therefore the Hearing Tribunal finds the allegation is proven and the conduct is unprofessional.

Charge 2 – On or about November 23, 2021 you made a false declaration on your 2022 Practice Permit Renewal Application by declaring you had passed the Patient Relations Module when you had not done that.

The practice permit renewal application required Ms. Grimmon to choose "yes" or "no" in response to a number of statements. Ms. Grimmon chose "yes" in response to the statement confirming she had completed the Patient Relations Module when that was not the case. She also chose "yes" in response to the statement requiring her to certify the information she provided in the application was "true and correct in every aspect". The information Ms. Grimmon provided in her practice permit renewal application was *not* true and accurate in every aspect, as Ms. Grimmon had not completed the Patient Relations Module. The Hearing Tribunal finds this allegation is factually proven on a balance of probabilities.

Further, the Hearing Tribunal finds the factually proven conduct amounts to unprofessional conduct. Dental Assistants are expected to demonstrate accountability by accepting responsibility for their decisions and behaviour (Code of Conduct, Article 3.1(a)). Making a false declaration on a practice permit renewal application is the opposite of demonstrating accountability. Further, as the Registrar stated in her evidence, the College relies on members providing accurate information to the College to determine whether members meet the requirements for continued practice. Transparency and honesty with one's regulator are fundamental to self-regulation.

Therefore the Hearing Tribunal finds the allegation is proven and the conduct is unprofessional.

Charge 3 – On or about January 17, 2022 through March 31, 2022 you failed to respond and/or failed to respond promptly and/or failed to respond meaningfully to communications from the College concerning your completion of the Patient Relations Program, contravening Article 6.2(c) of the College's Code of Ethics and Standard of Practice 6.2(g) of the College's Standards of Practice.

The Hearing Tribunal considered the communication between the College and Ms. Grimmon about the Patient Relations Module. It is clear Ms. Grimmon was given many chances to complete the Patient Relations Module, initially by the Registrar and then by the Complaints Director. However, there was no indication Ms. Grimmon was working with the College to complete it. On March 22, 2022, Ms. Grimmon informed the Complaints Director she was still having issues signing in but was no longer working as a Dental Assistant and only keeping her license in case she ever chose to come back to dental assisting. The Complaints Director responded by clearly informing Ms. Grimmon she was still required to complete the Patient Relations Module if she had an active practice permit, and tried to address Ms. Grimmon's difficulties signing in. The evidence supports that after this, Ms. Grimmon did not respond or follow up. As such, the Hearing Tribunal finds on a balance of probabilities Ms. Grimmon failed to respond promptly or meaningfully to communications from the College about her completion of the Patient Relations Module, and after March 22, 2022, failed to respond at all.

Further, the Hearing Tribunal finds the factually proven conduct amounts to unprofessional conduct. Broadly speaking, Dental Assistants are expected to respond to requests for information promptly and professionally (Standard of Practice 6.2(g); Code of Ethics, Article 3.4). More specifically, Dental Assistants are expected to communicate with the College in a professional and timely manner (Code of Ethics, Article 6.2(c); Standard of Practice 12.2(c)). This includes giving timely attention and providing appropriate professional responses to correspondence, communication and requests from the College. Ms. Grimmon failed to do so.

Therefore the Hearing Tribunal finds the allegation is proven and the conduct is unprofessional.

Charge 4 – On or about February 17, 2022 through March 31, 2022 you failed and/or failed to meaningfully cooperate with an investigator appointed pursuant to Part 4 of the *Health Professions Act*, which contravenes section 63(1) of the *Health Professions Act*.

The Hearing Tribunal finds Ms. Grimmon received the *Notice of Investigation* and the Complaints Director's accompanying request for a response on February 21, 2022, by registered mail. The Complaints Director asked Ms. Grimmon to provide a detailed response to the matters listed in the *Notice of Investigation* by no later than March 18, 2022.

Ms. Grimmon did not respond until March 17, 2022, when she asked the Complaints Director to update her email so she could sign in to complete the Patient Relations Module. The Complaints Director did so within a matter of minutes and advised she would waive the late fee if Ms. Grimmon completed the Patient Relations Module by the end of the day on March 18, 2022.

However, Ms. Grimmon did not respond until March 22, 2022, after the response deadline, indicating she was still having difficulty signing on and adding she was no longer in the dental field and was only keeping her license in case she ever chose to return. Again, the Complaints Director responded within minutes providing clarification about the requirement to complete the Patient Relations Module and support to assist Ms. Grimmon in accessing the Patient Relations Module.

The evidence supports that Ms. Grimmon did not respond after the Complaints Director's March 22, 2022 email. The evidence also supports that Ms. Grimmon never provided a detailed response to the matters listed in the *Notice of Investigation*.

Section 63(1) of the Act authorizes an investigator to, among other things, at any reasonable time require any person to answer any relevant questions. Further, the definition of "unprofessional conduct" in the Act specifically includes a failure to comply with a request of or cooperate with an investigator. In this case, the Complaints Director was the investigator. The Hearing Tribunal finds Ms. Grimmon was cavalier in her communication with the Complaints Director about the complaint against

Ms. Grimmon. There was no sense she took the investigation seriously, but rather decided to disengage from it. The Hearing Tribunal finds this amounted to a failure to meaningfully cooperate with an investigator appointed under Part 4 of the Act. Cooperation with one's regulator is fundamental to self-regulation, and the Hearing Tribunal finds Ms. Grimmon's conduct was unprofessional.

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 sanction.

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. The maximum fines that can be imposed are set out in section 158 of the Act, and s. 4 of the Dental Assistants Schedule (\$5,000 per finding).

Mr. Maxston indicated the Complaints Director was proposing the following orders: proof of completion of the Patient Relations Module and the College's ethics course within 30 days, payment of partial hearing costs in the amount of \$1,000 within 3 months, and payment of a global fine in the amount of \$500 within 3 months. Mr. Maxston noted both courses could be completed online at no cost to the individual member, and the Complaints Director subsequently confirmed the actual costs of the investigation and hearing were in the order of \$25,000.

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. He submitted Ms. Grimmon's conduct must be taken seriously: a regulated member of the College must fulfil their responsibilities. It was somewhat mitigating that Ms. Grimmon has no prior findings of unprofessional conduct. However, this was not an isolated incident but a repeated pattern of conduct over a period of three to four months. With respect to deterrence, Mr. Maxston submitted that even if Ms. Grimmon has abandoned her career in dental assisting (which is not known), it is still very important to point out to her that her conduct is not acceptable. General deterrence, or the message the Hearing Tribunal's orders send to *all* members, is critically important. Mr. Maxston submitted the Hearing Tribunal's orders should send a clear signal to all members that when there are continuing competence requirements, they must be met. There is "some freight to pay" when you are a member of a profession. Further, members should be aware the College is alive to false declarations on renewal applications. Finally, Mr. Maxston emphasized the importance of maintaining public confidence in the regulation of the dental assisting profession, by demonstrating the College takes such conduct seriously.

Before making a decision, the Hearing Tribunal asked Mr. Maxston for submissions on whether a written reprimand was appropriate, and whether the Complaints Director had considered asking for suspension or cancellation in this case. In particular, the Hearing Tribunal asked for submissions on potentially suspending Ms. Grimmon's practice permit until she complied with the orders. The Complaints Director submitted that given Ms. Grimmon was not currently working in the dental field according to the information provided, the Complaints Director did not see suspension as a priority but had no objections if the Hearing Tribunal considered it important.

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.

The Hearing Tribunal makes the following orders:

1. Ms. Grimmon shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Ms. Grimmon's practice permit shall be suspended until she has complied with paragraphs 3, 4, and 5 of the Hearing Tribunal's orders.
3. Ms. Grimmon must provide proof of completion of the CADA Ethics course within 30 days after being served with the Hearing Tribunal's written decision.
4. Ms. Grimmon must provide proof of completion of the Patient Relations Module within 30 days after being served with the Hearing Tribunal's written decision.
5. Ms. Grimmon must pay a global fine of \$500 within three months after being served with the Hearing Tribunal's written decision.
6. Ms. Grimmon must pay partial hearing costs of \$1,000 within three months after being served with the Hearing Tribunal's written decision.
7. If Ms. Grimmon is unable to pay the costs set out in paragraph 6 within the time period set out in paragraph 6, Ms. Grimmon may make a written request for an extension to the Complaints Director, who may extend the deadline in her sole discretion. Any such request must be made in advance of the deadline and must explain why Ms. Grimmon requires an extension.
8. If Ms. Grimmon does not pay the costs set out in paragraph 6 within the time period set out in paragraph 6 or, if an extension is granted per paragraph 7, within the extended time period, then Ms. Grimmon's practice permit shall be suspended until she has paid the costs in full.

The Hearing Tribunal makes the above orders for the following reasons.

A reprimand sends a clear message to Ms. Grimmon that her conduct is unacceptable. This message is reinforced by requiring Ms. Grimmon to pay a fine. As for the course requirements, successfully completing the Patient Relations Module is a critical requirement for *all* members of the College and is non-negotiable. The Hearing Tribunal agrees with the Complaints Director that requiring Ms. Grimmon to also complete the CADA's Ethics course is appropriate. These courses, though not onerous, are important. If Ms. Grimmon returns to practice at some point in the future, it is critical she understands and complies with her obligations as a regulated member of the College.

Without hearing directly from Ms. Grimmon, the Hearing Tribunal cannot know with certainty whether Ms. Grimmon will return to practice in the future. The Hearing Tribunal considered the possibility Ms. Grimmon could, for example, pick up casual shifts over the summer even if she did not return to dental assisting full time. With this in mind, the Hearing Tribunal was concerned the College would be undermined if Ms. Grimmon maintained an active practice permit without showing a willingness to comply with the College's requirements. For this reason, the Hearing Tribunal considered it important to suspend Ms. Grimmon's practice permit until she has complied with the course requirements and paid the fine. In making this order, the Hearing Tribunal also considered that Ms. Grimmon checked off a box on her renewal form acknowledging that failure to complete the Patient Relations Module could result in cancellation or suspension of her Registration and/or Practice Permit.

As for the order to pay partial investigation and hearing costs, the Hearing Tribunal found \$1,000 was a reasonable portion for Ms. Grimmon to pay. It is appropriate that Ms. Grimmon should bear some of the costs of these proceedings, which arose due to her conduct. The Hearing Tribunal also considered that the hearing could have been somewhat expedited if Ms. Grimmon had agreed in advance that the hearing could proceed in her absence. Instead, approximately two hours of the hearing were spent dealing with the Complaints Director's application to proceed in Ms. Grimmon's absence. The Hearing Tribunal notes, however, that \$1,000 is a very small portion of the actual investigation and hearing costs, which are in the order of \$25,000.

Dated at the City of Edmonton, in the Province of Alberta, on Wednesday, the 9th day of August, 2022.

Signed on Behalf of the Hearing Tribunal

by its Chairperson



Ms. Wanda Walker