

PROVINCE OF NOVA SCOTIA)
HALIFAX REGIONAL MUNICIPALITY)

IN THE MATTER OF: The *Dental Act* (the “Act”), SNS1992, c 3
as amended, and the *Discipline Regulations*,
NS Reg 3/2000 (the “*Discipline Regulations*”)

-and-

IN THE MATTER OF: **Dr. Joshua Profitt**, Dental Practitioner, of
Halifax Regional Municipality, Province of Nova
Scotia

ORDER OF DISCIPLINE COMMITTEE

Before the Discipline Committee (the “Discipline Committee”) of the Provincial Dental Board of Nova Scotia (the “Board”):

WHEREAS on December 5, 2022, the Registrar lodged a complaint (the “Complaint”) against Dr. Joshua Profitt with respect to two unconnected incidents:

- (a) The discovery of partially destroyed dental records on the side of the road in Mount Hope Avenue in Dartmouth, Nova Scotia; and
- (b) An email from a patient indicating they were having difficulty obtaining their dental records from Dr. Profitt.

AND WHEREAS on July 24, 2023, the Registrar of Board and Dr. Profitt entered into a Settlement Agreement pursuant to section 17A of the *Discipline Regulations*;

AND WHEREAS on August 8, 2023, the Complaints Committee of the Board recommended that the proposed Settlement Agreement be accepted and forwarded the Settlement Agreement to the Discipline Committee;

AND WHEREAS on October 16, 2023, a hearing was convened by the Discipline Committee at which time the proposed Settlement Agreement was considered;

AND WHEREAS at that hearing, the Registrar made submissions about the reasons for why the Discipline Committee’s decision should be reported in a publication of the Board on a named basis;

AND WHEREAS at that hearing, Dr. Profitt made submissions about the reasons for why the Discipline Committee’s decision should not be reported in a publication of the Board on a named basis;

AND WHEREAS the Discipline Committee decided to accept the proposed Settlement Agreement;

AND WHEREAS the Discipline Committee decided, for the reasons advanced by the Registrar, that its decision shall be reported in a publication of the Board on a named basis.

IT IS ORDERED that:

- a) The Settlement Agreement attached hereto shall constitute the decision of the Discipline Committee as to the Complaint (the "Decision") and the Complaint shall be disposed of in accordance with the terms of the Settlement Agreement; and
- b) The Decision shall be reported in a publication of the Board on a named basis, pursuant to section 30(1) of the *Discipline Regulations*.

Dated at Halifax, Nova Scotia this 10 day of October, 2023.


Dr. Thomas H. Boyle, Chair

PROVINCE OF NOVA SCOTIA)
HALIFAX REGIONAL MUNICIPALITY)

IN THE MATTER OF: The *Dental Act* (the “*Act*”), SNS1992, c 3
as amended, and the *Discipline Regulations*,
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-and-

IN THE MATTER OF: **Dr. Joshua Profitt**, Dental Practitioner, of
Halifax Regional Municipality, Province of Nova
Scotia

SETTLEMENT AGREEMENT

Dr. Joshua Profitt, a licensee with the Provincial Dental Board of Nova Scotia (the “PDBNS”), hereby agrees with and consents to the following:

Statement of Facts

1. Dr. Profitt is a dentist licensed by the PDBNS who practises dentistry at MicMac Dental Centre, a community dental clinic in Dartmouth, Nova Scotia (the “Clinic”).
2. On December 5, 2022, the Registrar of the PDBNS lodged a complaint against Dr. Profitt with respect to two unconnected incidents:
 - a. the discovery of partially destroyed dental records on the side of the road on Mount Hope Avenue in Dartmouth, Nova Scotia; and
 - b. an email from a patient (“Patient RF”) indicating they were having difficulty obtaining their dental records from Dr. Profitt.
3. The facts underpinning these incidents are set out in this settlement agreement.

Background

4. Dr. Profitt purchased a practice (the “Practice”) within the Clinic from Dr. Gregory Branscombe in January 2020. At that time, the majority of Dr. Branscombe’s non-digital patient records were being stored at Iron Mountain, a secure offsite record storage facility (the “Stored Records”). At the time Dr. Profitt purchased the Practice, he was unaware of precisely

which records were being stored at Iron Mountain. However, he assumed all of the Stored Records had been digitized.

5. The COVID-19 pandemic broke out shortly after Dr. Profitt purchased the Practice, and the Clinic shut down for approximately three months.
6. After the Clinic re-opened, Dr. Profitt learned Iron Mountain was charging the Practice \$750 per month in storage fees. Dr. Profitt decided to remove all of the Stored Records from the facility and transfer them to his personal residence.
7. The Stored Records comprised of approximately 150 boxes. The contents of the Stored Records were mixed, and included patient records as well as records related to Dr. Branscombe's personal finances.
8. Dr. Profitt contacted Dr. Branscombe with respect to Dr. Branscombe's personal records, and Dr. Branscombe consented to Dr. Profitt destroying his personal financial records.
9. Dr. Profitt proceeded to destroy Dr. Branscombe's financial documents. He initially attempted to burn the records using a burn barrel but found this method to be inefficient. Dr. Profitt then hired Atlantic Docushred, a shredding company which uses specialized trucks to shred materials onsite. Atlantic Docushred attended Dr. Profitt's residence on November 16, 2021 and destroyed approximately 24 boxes of the Stored Records, all of which were related to Dr. Branscombe's personal finances, and which were over 7 years old.
10. In the spring of 2022, Dr. Profitt's father was performing administrative tasks for the Practice and Dr. Profitt asked his father to assist him in disposing some of the Stored Records.
11. Dr. Profitt's father made a further appointment with Atlantic Docushred. On June 8, 2022, Atlantic Docushred proceeded to destroy 50 boxes of patient records dated 2005 or earlier. These patient records included records for both adult and pediatric patients.
12. At this time, Dr. Profitt was unfamiliar with numerous PDBNS guidelines, including those regarding recordkeeping and retention periods for patient records. In particular, Dr. Profitt was not aware that the 17-year retention period for pediatric patient records only begins once the patient reaches the age of majority.
13. Dr. Profitt's father continued to destroy the Stored Records in the summer and fall of 2022. Rather than engaging a document shredding company to

shred more of the Stored Records, Dr. Profitt's father began destroying records himself.

14. Dr. Profitt's father first attempted to destroy the records by burning them, but abandoned this method because he became irritated by the smoke. Dr. Profitt's father placed the partially burned records in a garbage bag at the side of the road for curbside garbage collections.
15. In September 2022, portions of the Stored Records were still located at Dr. Profitt's personal residence. Dr. Profitt asked his father to arrange to have the remaining Stored Records moved to storage. Dr. Profitt was under the impression that his father moved the remaining Stored Records to storage in late September, early October, 2022 while Dr. Profitt was out of the country.

Discovery of the Mount Hope Records

16. On August 24, 2022, the PDBNS received an email from a member of the public advising that he had discovered partially destroyed dental records on the side of the road on Mount Hope Avenue in Dartmouth, Nova Scotia (the "Mount Hope Records").
17. The Deputy Registrar, Dr. Curtis Gregoire, immediately attended the scene and collected the Mount Hope Records. The Mount Hope Records were partially burned, but confidential patient information was still discernible on certain documents.
18. The documents revealed the Mount Hope Records belonged to Dr. Branscombe. The PDBNS contacted Dr. Branscombe. Dr. Branscombe indicated he had sold the Practice to Dr. Profitt on January 6, 2020 and had left his patient records behind at this time.
19. The Registrar contacted Dr. Profitt on August 26, 2022 informing him that the Mount Hope Records had been discovered. Dr. Profitt advised he had destroyed a portion of Dr. Branscombe's records using a document shredding company but he would investigate the matter.
20. The PDBNS identified the names of 36 individuals in the Mount Hope Records. Of the 36 patients identified in Mount Hope Records, nine patients had been seen at the Clinic since 2005, which was within the 17-year retention period for patient records. A further five patients had visited the Clinic since 2019 and would have been considered "active patients" of the Practice. All of the notes and records for these active patients had been previously digitized.

Patient RF's Records

21. On October 4, 2022, Patient RF, a former patient of Dr. Branscombe contacted the PDBNS seeking assistance in retrieving their dental records ("RF's Records") from the Practice.
22. Patient RF indicated that they had made multiple requests to the Practice for their Dental Records without success.
23. Patient RF first requested their dental records in March 2022, and was informed by the Practice's staff that RF's Records had not been properly filed at the time the Practice was sold to Dr. Profitt and that the Practice was unable to locate them. The staff did not inform Dr. Profitt of Patient RF's request.
24. In October 2022, the PDBNS contacted the Clinic's office manager, Lori Shea. Ms. Shea confirmed the Practice was in possession of RF's Records and promised to send a digital copy to Patient RF.
25. While in the process of digitally compiling RF's Records, the Clinic realized that RF's chart notes prior to 2015 were not included in the digital record. It appears that Patient RF's dental records prior to or around 2015 had not been scanned when the Clinic digitized their patient records.
26. Also in October 2022, Dr. Profitt was first informed that Patient RF was attempting to obtain their old dental records. He asked his father to locate RF's Records from the Stored Records, but his father informed him that he could not locate RF's Records.
27. Dr. Profitt advised Patient RF that the Practice could not locate their records, and met with Patient RF to answer their questions about their dental history. At this time, Patient RF informed Dr. Profitt that they had been trying to obtain their dental records since March 2022.

The Registrar's Complaint

28. On December 5, 2022, the Registrar lodged a formal complaint against Dr. Profitt, alleging that he had breached several professional standards.
29. On December 19, 2022, Dr. Profitt indicated he was in the process of undertaking an internal investigation into the incidents.
30. In December 2022, while investigating the incidents, Dr. Profitt learned that rather than move the Stored Records to storage in the fall of 2022 as he had indicated, his father had personally shredded the remaining Stored Records. The remaining Stored Records contained file materials that were

less than 17 years old, and contained records for both adult and pediatric patients. Dr. Profitt's father's impression was that all of these records had already been digitized and that hard copies did not need to be retained. This impression was based on conversations that had occurred during the sale of the Practice.

31. On January 19, 2023, the Complaints Committee referred Dr. Profitt's matter to the Discipline Committee.

Admissions

Dr. Joshua Profitt admits the facts set out in the above Statement of Facts, and further admits the following:

- a) Dr. Profitt failed to abide by the *Dental Recordkeeping Guidelines*, specifically Section IV (Privacy Compliance) and Section VII (Stewardship of Dental Records). Dr. Profitt admits that this constitutes unprofessional conduct as defined in Section 4(1)(g) of the *Discipline Regulations*.
- b) Dr. Profitt breached the *Code of Ethics Regulations*, specifically Articles 9 and 12, contrary to Section 3(d) of the *Discipline Regulations*.
- c) Dr. Profitt's management of patient records constitutes infamous conduct as defined in Section 4(4)(c) of the *Discipline Regulations*.

Sanctions

Dr. Joshua Profitt and the PBDNS agree, conditional upon the recommendation of this Settlement Agreement by the Complaints Committee and the approval of this Settlement Agreement by the Discipline Committee, that Dr. Profitt shall be subject to the following sanctions:

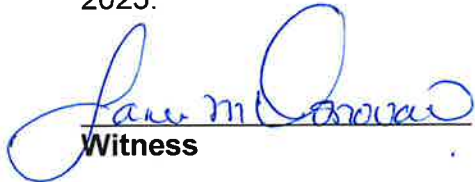
- a) Dr. Profitt is required to successfully complete a course in Ethics and Recordkeeping (to include Stewardship of Records and Privacy Compliance), as approved by the Registrar, at his own expense, within 24 months of the date of the Order approving this Settlement Agreement.
- b) Dr. Profitt will remit to the PDBNS the sum of \$5000, on or before October 1, 2023, as a contribution to the PDBNS's costs to investigate the complaint.

Confidentiality

If, for any reason whatsoever, this Settlement Agreement is not recommended by the Complaints Committee, or is recommended by the Complaints Committee but not accepted by the Discipline Committee, there shall be no reference to this

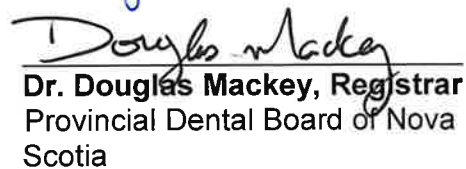
Settlement Agreement or any admissions contained herein in any subsequent proceeding or hearing under the Act, and the terms of this Settlement Agreement will not be disclosed to any person, except with the written consent of both the PDBNS and Dr. Profitt or as may be required by law.

THIS SETTLEMENT AGREEMENT made this 24 day of July, 2023.


Witness


Dr. Joshua Profitt


Witness


Dr. Douglas Mackey, Registrar
Provincial Dental Board of Nova Scotia

Recommended by the Complaints Committee this 1 day of Aug., 2023, by Dr. Clare Champoux, Chair of the Complaints Committee.


Witness


Dr. Clare Champoux, Chair
Complaints Committee

Accepted by the Discipline Committee this _____ day of _____, 2023
by Dr. Thomas Boyle, Chair of the Discipline Committee.

Witness

Dr. Thomas Boyle, Chair
Discipline Committee

Settlement Agreement or any admissions contained herein in any subsequent proceeding or hearing under the Act, and the terms of this Settlement Agreement will not be disclosed to any person, except with the written consent of both the PDBNS and Dr. Profitt or as may be required by law.

THIS SETTLEMENT AGREEMENT made this 24 day of July, 2023.

Lawrence D. Dore
Witness

Kathryn Segura
Witness

Dr. Joshua Profitt

Dr. Douglas Mackey, Registrar
Provincial Dental Board of Nova Scotia

Recommended by the Complaints Committee this 1 day of Aug., 2023, by Dr. Clare Champoux, Chair of the Complaints Committee.

Lawrence D. Dore
Witness

Dr. Clare Champoux
Dr. Clare Champoux, Chair
Complaints Committee

Accepted by the Discipline Committee this 20 day of October, 2023 by Dr. Thomas Boyle, Chair of the Discipline Committee.

George A. Reader MD.
Witness

Dr. Thomas Boyle
Dr. Thomas Boyle, Chair
Discipline Committee