

IN THE MATTER OF A HEARING BY
THE DISCIPLINE COMMITTEE OF THE COLLEGE OF MASSAGE THERAPISTS
OF BRITISH COLUMBIA CONVENED PURSUANT TO THE PROVISIONS OF
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183

BETWEEN:

College of Massage Therapists of British Columbia

(the "College")

AND:

Stephen Bartlett

(the "Respondent")

REASONS FOR DECISION
(Penalty and Costs)

Date and Place of Hearing:

In writing

Panel of the Discipline Committee (the "Panel")

Marilynne Waithman, Chair
Emily Bissonette, RMT
Jennifer Lie, RMT

Counsel for the College:

Elizabeth Allen

The Respondent:

Did not participate

Counsel for the Panel:

Susan Precious

A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) conducted a hearing pursuant to section 38 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”) and determined that Stephen Bartlett (the “Respondent”) violated the College’s Bylaws, did not comply with standards imposed under the HPA and committed professional misconduct.
2. On August 31, 2023, the Panel released its decision (the “Conduct Decision”) in this matter.
3. The Panel set a schedule for written submissions on penalty and costs. The College provided written submissions on September 22, 2023. The Respondent’s deadline for written submissions was October 13, 2023. The Respondent did not provide written submissions.
4. The College seeks the following orders:
 - a. A reprimand against the Respondent pursuant to section 39(2)(a) of the HPA;
 - b. The Respondent is suspended for six months, to be served commencing the date of the Respondent’s reinstatement in the event that he successfully applies for registration with the College in the future; and
 - c. The Respondent pay costs and disbursements in the amount of \$33,152.18 pursuant to section 39(5) of the HPA, which shall be payable within 90 days of the Panel’s order.
5. The College also seeks a direction that the Registrar publish notification of the disposition pursuant to section 39.3 of the HPA.
6. For the reasons that follow, the Panel has decided to grant the orders sought by the College, though the Panel has reduced the costs award, and extended the time period for the Respondent to pay the costs.

B. LAW

Legal Framework

7. Having made a determination under section 39(1) of the HPA, the Panel must decide what, if any, penalty is appropriate.
8. The Panel's authority to impose sanctions is set out in section 39 of the HPA. Section 39(2) of the HPA authorizes the Panel to impose the following penalties:

39 (2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

- (a) reprimand the respondent;
- (b) impose limits or conditions on the respondent's practice of the designated health profession;
- (c) suspend the respondent's registration;
- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
- (e) cancel the respondent's registration;
- (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

9. If the Panel orders a suspension or cancellation, the following additional provisions apply:

39 (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
- (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - (i) a date specified in the order, or
 - (ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and

impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

10. The Panel has the authority to award costs pursuant to section 39(5) of the HPA subject to the limits imposed in section 39(7):

39...

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

...

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

11. Section 16(1) and 16(2) of the HPA inform the Panel's assessment:

Duty and objects of a college

16 (1) It is the duty of a college at all times

(a) to serve and protect the public, and

(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

(a) to superintend the practice of the profession;

(b) to govern its registrants according to this Act, the regulations and the bylaws of the college;

...

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;

...

(g) to establish, monitor and enforce standards of professional ethics amongst registrants;

...

(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

Jurisdiction over Former Registrants

12. The Respondent was a registrant of the College at the time of the Discipline Hearing. The Respondent is no longer a registrant of the College. Following a proceeding under section 35 of the HPA in August 2022, during which the Respondent was suspended, he did not renew his registration for 2023.
13. The Panel retains jurisdiction to make any penalty order against a former registrant pursuant to section 39(2) of the Act. Section 26 of the Act defines “registrant” to include a “former registrant” for the purposes of Part 3 of the Act, which governs the College’s inquiry and discipline processes. Part 3 of the Act includes section 39 of the HPA.
14. In *College of Massage Therapists of British Columbia v. Gill* (October 31, 2019), the Discipline Committee confirmed the HPA’s jurisdiction over former registrants and held that a suspension may be ordered against a former registrant. *Re Gill* has been repeatedly followed including in *Re Krekic* (December 21, 2022) and *Re Argatoff* (June 14, 2023).

Factors in determining the Appropriate Penalty

15. The imposition of penalty is in the Panel’s discretion. The Panel must assess a suitable penalty based upon the findings it has made and accounting for all the relevant circumstances.
16. Courts and discipline panels have identified factors to consider when imposing penalties. In *Law Society of BC v. Dent*, 2016 LSBC 05, a hearing panel suggested a consolidated list of four factors, which drew from a longer list of factors that had been outlined in *Law Society of BC v. Ogilvie*, 1999 LSBC 17:

Nature, gravity and consequences of conduct

- [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

Character and professional conduct record of the respondent

- [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

Acknowledgement of the misconduct and remedial action

- [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

Public confidence in the legal profession including public confidence in the disciplinary process

- [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

17. The *Ogilvie / Dent* approach has been repeatedly applied in professional regulation cases in British Columbia, including by the Discipline Committee in *Re Gill* and *Re Krekic*. The Panel considers that it is the appropriate approach to adopt in this case.

C. ANALYSIS

Nature, Gravity, and Consequences of Conduct

18. In the Conduct Decision, the Panel found that the allegations at paragraphs 1(b) to (f), 2(b) and 3 of the Citation were proven on a balance of probabilities.
19. With respect to paragraph 1(b) of the Citation, the Panel found that the Respondent made all of the statements that were particularized and that those were unprofessional, inappropriate and of a personal nature. The Panel determined that there was a breach of the Boundaries Standard with respect to that allegation.
20. With respect to paragraph 1(c) of the Citation, the Panel found that the Respondent committed professional misconduct and breached the Consent Standard when he manipulated the patient's neck without any or adequate consent and the patient had instructed him not to do so.

21. With respect to paragraph 1(d) of the Citation, the Panel found that the Respondent breached the Boundaries Standard, breached the Consent Standard and committed professional misconduct when he failed to adequately communicate a treatment plan to treat the patient's pectoral muscles and serratus anterior, including that this treatment would be at or near her breasts.
22. With respect to paragraph 1(e) of the Citation, the Panel found that the Respondent breached the Consent Standard and committed professional misconduct when he failed to obtain consent to treat at or near the patient's breasts.
23. With respect to paragraph 1(f) of the Citation, the Panel found that the Respondent breached the Consent Standard and committed professional misconduct when he failed to adjust his treatment and communicate with the patient when she was experiencing pain, and the Respondent was treating at or near her breasts.
24. With respect to paragraph 2(b) of the Citation, the Panel found that the Respondent breached the Consent Standard, breached the Boundaries Standard and committed professional misconduct when he touched the patient's low back down to the tailbone and had his thumb on the patient's gluteal cleft without consent.
25. With respect to paragraph 3(a) of the Citation, the Panel found that the Respondent breached the College's Bylaws when he advertised that he specialised in structural alignment, specifically spinal and pelvic alignment.
26. With respect to paragraph 3(b) of the Citation, the Panel found that the Respondent breached the College's Bylaws when he called himself an "osteopath".
27. With respect to paragraph 3(c) of the Citation, the Panel found that the Respondent breached the College's Bylaws when he called himself an "Arthrokinetic therapist".
28. In sum, the Panel found that the Respondent breached the Boundaries Standard three times, breached the Consent Standard five times, breached the College's Bylaws three times and committed five acts of professional misconduct.
29. The consequences of the conduct are significant. One patient testified that the Respondent's conduct made her incredibly uncomfortable and that she went into

survival mode. Another patient testified that he became increasingly anxious and uncomfortable and left during the appointment.

30. The College provided evidence about the importance of advertising and use of title restrictions. The advertising contraventions were not a single mistake or transgression. There were three separate breaches, all of which continued for an extended period of time.
31. The Panel finds that the conduct was serious.
32. The Panel considers that this factor favours the imposition of a more serious penalty.

Character and Professional Conduct Record of the Respondent

33. The Respondent is 54 years old. He became a registrant of the College on October 12, 2004.
34. The Respondent has a prior disciplinary history. Following the complaint of a female patient on August 11, 2011, the Respondent entered into a Consent Order on October 7, 2014. He made several admissions, including:

I engaged in professional misconduct by failing to comply with the standard requiring professional speech by engaging in personal discussions with the Complainant during massage therapy sessions on June 28 and August 6, 2011. The personal discussions pertained to my break-up with my girlfriend, the problems I was having with my girlfriend, my dating experiences with women and the Complainant's personal experiences.

I engaged in professional misconduct by failing to comply with the standard requiring informed consent in my treatment of the Complainant's neck during a massage therapy session on August 8, 2011. Specifically, I failed to explain the procedure, request and obtain informed consent prior to working on the Complainant's neck and in particular, pressed on her neck. The Complainant reported that she was sexually assaulted and strangled when she was younger. She also reported that the force applied to her hip area made her cry and that she was bruised at the hip.

35. The Respondent was reprimanded, had his registration suspended for 30 days and paid costs in the amount of \$1,000.
36. The College submits that the Respondent was a relatively senior registrant having practised for approximately 15 to 16 years at the time of the conduct. The College

also submits that the conduct is similar to that for which the Respondent was disciplined in 2014. As such, the Respondent should have been well aware of the type of communications that were appropriate with patients and what needed to be done to obtain informed consent.

37. The College submits that the Respondent's age and experience are aggravating factors. The Respondent ought to have known better particularly when he had previously been suspended for unprofessional communication and failing to obtain consent.
38. The Respondent asked to tender reference letters during the conduct portion of the Discipline Hearing. The Panel found they were irrelevant to the allegations in the Citation but indicated that they may be relevant at the penalty stage. The Respondent has not tendered those letters at this stage.
39. The Panel agrees with the College's submissions. The Respondent was of an age and level of experience where he ought to have known better. This is particularly the case given that he had been suspended for unprofessional communication and failing to obtain consent. The fact that he has a prior disciplinary history for similar conduct is aggravating. There is no evidence before the Panel of mitigating circumstances.
40. The Panel considers that this factor favours the imposition of a more serious penalty.

Acknowledgement of the Misconduct and Remedial Action

41. Acknowledgement of misconduct and remedial action can be a mitigating factor; however, lack of acknowledgement is not an aggravating factor.
42. The College submits that the Respondent has never acknowledged any misconduct. In its written submissions, the College outlined several comments made by the Respondent which demonstrate the absence of any acknowledgment of misconduct, some of which include:
 - Number 1, I've done nothing wrong. I know what the truth is and let's hope that everyone here is interested in obtaining the truth...The other thing I want to say at this time is I'm very angry that I'm here because I know what the truth is.

- So let's start with [A.A.]. I got to say, too, that after listening to her, this woman's got quite an imagination...
- So this is all just work of fiction. None of this occurred. I never said any of this stuff...
- I mean, the story just keeps changing over and over and over. Every time she tells the story, it's radically different. And, you know, this is right from day one that she's doing this. I mean, it sounds like somebody is seeking some attention if you ask me...
- I never did that. And, again, as I say, she – I remember she had this white blouse on, completely buttoned up. There was never the opportunity to do that, nor do I do -- I don't even perform those things so that's another act of fiction.
- You have to account there's going to be a certain amount of people that are going to be like this. A certain percentage of the public is going to have mental illness, personal problems, maybe they're -- I hate to use this term -- but maybe they're not capable of understanding. Sometimes they're, you know, we're not all good at everything. We're not all capable of understanding everything but we have to account this. In the percentage of the public, you're going to encounter it.
- Where he gets the idea that he was assaulted, this is really getting out of hand.
- I can only guess I kind of suspected that he's not fully at peace with the whole transformation and I made it difficult for him.
- We live in a world now where there's a lot of cancel culture going around and people like to jump on bandwagons and complain and bitch as much as they can about stuff all over the place and screw people's lives.

43. The College submits that the Respondent also failed to demonstrate understanding and appreciation of several fundamental principles of the practice of massage therapy. The College cited several examples, including the following:

- In Canada there is a reserve title for osteopath but not in the province of British Columbia so this is the difference. And I made sure of this before I started that...But in province of BC, there is no governing body for osteopaths, which means it's not a reserve title. The rest of Canada, yes, but not in British Columbia because they -- in their -- I guess, in many other provinces have a governing body for it but BC doesn't and I made sure of this beforehand.

- Q And do you agree that consent is a very important part to an RMT's practice?

A I think it's a bit overblown in our profession if you ask me. I think it is a bit overblown. We're the only profession that has that at the level that it seems to be -- where it seems to be going.

- Q Mr. Bartlett, were you aware that the College published a consent standard on January 15, 2019?

A Probably not.

Q Were you aware that the College published a consent standard relatively recently say?

A No.

- Do you really need to get -- to get to request consent for every tiny, little thing that goes on for a treatment, that's very time-consuming. And I think that they're there to get treated. I do talk to them about what I'm going to do and they say okay, all right, that's consent. But to go, I think, beyond that, I think is just kind of wasting time a little bit. They're there -- if they're there to get well and to get better.
- Q Are you aware that there's an updated code of ethics that was published in January 2021?

A No.

Q So you haven't reviewed that?

A No. 2021, I was recovering from a stroke so that's a big reason why I wouldn't have seen it.

Q Are you practicing in 2022 as a registered massage therapist?

A Yeah.

Q And you haven't reviewed that updated code of ethics since you've been back to practice from your stroke?

A No. Not that I know of. I may have. I don't know.

44. The College submits that the Respondent has not demonstrated that he has taken any remedial steps to remedy his misconduct or his understanding and knowledge of fundamental concepts and the basic standards of the College since the hearing of this matter or the Panel's Conduct Decision.
45. The College submits that there are no mitigating factors under this heading.

46. The Panel accepts the College's submissions. The Panel finds that the Respondent did not acknowledge any misconduct. To the contrary, he asserted he did nothing wrong.
47. The Panel finds there is no evidence of any remedial action undertaken by the Respondent.
48. The Panel finds that there are no mitigating circumstances in respect of this factor.

Public Confidence in the Profession including Public Confidence in the Disciplinary Process

49. The College submits that the Respondent's conduct harms the standing of the profession. The College argues that the penalty in this case should demonstrate to the profession the seriousness with which the College treats the obligation to communicate professionally, obtain informed consent and not mislead the public with respect to qualifications and training. This is the general deterrent value in the College's proposed sanction.
50. The College submits that the Respondent also needs to understand his obligations to comply with the College's Bylaws and Standards should he ever seek to be reinstated. There should be enough of an element of specific deterrence that the public will not be placed at risk again.
51. The College submits that overall, there are no mitigating factors under this heading.
52. The Panel accepts the College's submissions. The Panel finds that there is a need for specific deterrence and general deterrence, as well as a need to protect public confidence in the profession in this case. The Respondent needs to understand his obligations to comply with the College's Bylaws and Standards should he ever seek to be reinstated. The Panel finds that there is also a need to send a clear message to the profession of the importance of communicating professionally, obtaining informed consent, and not misleading the public with respect to qualifications and training. These requirements are central to the College's ability to regulate the profession and act in the public interest, and failure to abide by those requirements

risks undermining public confidence in the College's ability to regulate the profession.

53. The Panel finds that this factor weighs in favour of the imposition of a more serious penalty.

Caselaw

54. While they are not binding, it is helpful to examine outcomes in similar cases in assessing an appropriate penalty.

55. The College cited the following cases:

- a. In *Re Henniger* (April 21, 2021), a panel of the Disciplinary Committee of this College accepted a joint submission on penalty for a registrant who failed to adequately communicate the treatment plan to treat the patient's pectoral muscles, including that he would treat at or near the patient's breasts, failed to obtain informed consent to treat at or near the patient's breasts and failed to keep adequate records of the appointment. The panel found that this constituted unprofessional conduct, imposed a suspension of seven days and mandated that the registrant complete remedial education as well pay costs of the hearing.
- b. In *College of Nurses of Ontario v Prendergast*, 2016 CanLII 153067 (ON CNO), a reprimand, one month suspension and supervision were imposed upon a nurse who admitted that he had performed a breast and abdominal exam without informed consent and failed to document those exams. *Prendergast* also referred to three other similar cases where there were reprimands, suspensions in the range of one to two months and other elements of a penalty.
- c. In *Re Tsioris*, a February 23, 2012 decision from the College of Massage Therapists of Ontario, the registrant pleaded guilty to performing a chest/pectoral massage without sufficient consent and failing to maintain adequate records of the appointment. The joint submission on penalty to the discipline panel was that the registrant shall be suspended for three

months, which suspension shall be reduced to two months if he completed appropriate remedial education, which the panel accepted.

56. The College notes that there are distinguishing features in the cases above. It submits that the conduct in this case is more serious than in *Re Henniger* as there were more patients, more appointments and the breaches were more numerous in the present case. In *Prendergast*, there was an admission of misconduct which is a significant mitigating factor.
57. The College also submits that the range of a two to three month suspension may have been appropriate in this case if there was only one aspect to one complaint and the Respondent had no prior disciplinary history. The College cited *Re Gill* in which a three-month suspension was ordered where the respondent failed to respond (amongst other things) and had previously failed to pay a fine.
58. The College cited *Re Palmer*, 2023 LSBC 24, quoting from *Re Lessing*, 2013 LSBC 29, in which the Law Society of British Columbia set out the following considerations relating to progressive discipline:

[32] We adopt the reasoning in *Lessing*, which outlined the significance of the PCR as it relates to the concept of progressive discipline in determining the appropriate disciplinary action:

[71] In this Review Panel's opinion, it would be a rare case for a hearing panel or a review panel not to consider the professional conduct record. These rare cases may be put into the categories of matters of the conduct record that relate to minor and distant events. In general, the conduct record should be considered. However, its weight in assessing the specific disciplinary action will vary.

[72] Some of the non-exclusionary factors that a hearing panel may consider in assessing the weight given are as follows:

- (a) the dates of the matters contained in the conduct record;
- (b) the seriousness of the matters;
- (c) the similarity of the matters to the matters before the panel; and
- (d) any remedial actions taken by the Respondent.

[73] In regard to progressive discipline, this Review Panel does not consider that *Law Society of BC v. Batchelor*, 2013 LSBC 9 stands for the proposition that progressive discipline must be applied in all circumstances. At the same time, the Review Panel does not believe that progressive discipline can only be applied to similar matters.

[74] Progressive discipline should not be applied in all cases. A lawyer may steal money from a client. In such a case, we generally skip a reprimand, a fine or even a suspension and go directly to disbarment. Equally, a lawyer may have in the past engaged in professional misconduct requiring a suspension. Subsequently that lawyer may be cited for a minor infraction of the rules. In such a situation, progressive discipline may not apply, and a small fine may be more appropriate.

59. The College submits that the principle of progressive discipline as set out in *Lessing* was recently applied by the Saskatchewan Court of Appeal in *Peet v. Law Society of Saskatchewan*, 2019 SKCA 49, and is one of many sentencing factors for a panel to consider.
60. The College submits that while the Respondent's consent order was more than a decade ago, the conduct was equally serious and involved similar infractions with no remedial action taken since that time. As such, progressive discipline should apply as one of many factors.
61. The Panel has considered the above authorities. The Panel finds that this case is more serious than the cases cited by the College. This case involved multiple patients and multiple violations. In addition, the Panel finds that the principles of progressive discipline are relevant and useful and apply in this case. The Respondent has a discipline history involving similar types of misconduct. The present case and the Respondent's historical disciplinary matter are both serious matters. Both matters involve unprofessional communication and failing to obtain consent. While the Respondent's disciplinary history is not recent, there is no evidence before this Panel of any remedial action that has been undertaken since that time.
62. Having weighed all the *Dent* factors, the relevant caselaw, and totality of the circumstances, the Panel considers that a reprimand and a suspension of six months ought to be imposed in this case. This will be served if the Respondent ever reapplies for registration with the College and is reinstated in future.

Costs

63. As outlined above, section 39(5) of the HPA permits the Panel to award costs against a respondent if a tariff has been adopted as allowed by section 19(1)(w.1). The award is subject to the limitation in section 39(7) of the HPA that costs must not exceed in total 50% of the actual costs of legal representation.
64. Section 72 of the College's Bylaws establishes a tariff of costs pursuant to the HPA, set out in Schedule "F" to the Bylaws.
65. The Bylaws provide that before renewal or reinstatement of registration, the Registrar must receive any outstanding debt owed to the College under the HPA.
66. The College prepared a Bill of Costs setting out the costs it claims. The amount of costs it claims pursuant to the tariff is \$8,300. The units assigned reflect that this matter was of ordinary difficulty. The College notes that there was substantial correspondence between the parties, there was a pre-hearing conference and an adjournment application which resulted in an adjournment of the Discipline Hearing. The College's affidavit materials confirm that it is seeking less than 50% of the actual costs to the College for legal representation for the purposes of this matter.
67. The College notes that cost awards can be reduced if the unsuccessful party demonstrates that a portion of the hearing was attributable to bringing evidence on allegations that were not ultimately proven.
68. The College submits that while it was not successful in proving paragraph 1(a) or 2(a) of the Citation, those facts and the College's arguments are not extricable from the proceeding such that there should be a reduced award of costs. The College argues that all of the facts given by the complainants in support of those allegations were a necessary part of the narrative of their respective appointments. Any time spent on legal submissions on those paragraphs of the Citation was minimal.
69. The College also notes the Panel's findings at paragraph 80 of the Conduct Decision that the Respondent's comments "came close" to a diagnosis even though the threshold was ultimately not met. In addition, at paragraph 141 of the Conduct Decision, the Panel found that the Respondent's communications with one of the

complainants was not optimal even though those comments did not meet the threshold.

70. The College claims disbursements for the expenses it incurred in conducting the hearing. The College submitted an affidavit attaching the relevant materials in support of the disbursements it claims. The total amount of disbursements that the College claims is \$24,852.18. These disbursements include:
 - a. Charges by counsel for the College for disbursements in the amount of \$5,255.66, which includes fees paid to the College's expert; and
 - b. Fees paid for court reporter and video-conferencing services from May 16 to 20, 2022 in the amount of \$19,596.52.
71. The total amount of costs and disbursements sought by the College is \$33,152.18.
72. The College also submits that the Panel must stipulate a time for payment of costs. It may be order that the costs are payable immediately or at stipulated intervals. Absent any information from the Respondent about a timeline or ability to pay, the College submits that the costs be paid in full 90 days from the date of the Panel's order.
73. The Panel finds the College's costs and disbursements to be reasonable and necessary, and in accordance with the requirements set out in the HPA and the College's Bylaws (including the tariff).
74. The Panel notes that the disbursement charges are high but considers that they are reasonable in the circumstances of this case given that reporting and transcription were necessary for the hearing, and advancement of the case, including preparation of the College's closing submissions. The Panel notes the particulars alleged in this case involved many statements and there was conflicting evidence that needed to be resolved between the witnesses in relation to those statements. The transcripts were necessary for that task.
75. The Panel considered whether the award for costs and disbursements should be reduced given that not all of the allegations in the Citation were proven. The Panel has decided to exercise its discretion to reduce the award in this case. The College

was largely successful in this Discipline Hearing proving nine of the eleven allegations in the Citation. The most serious allegations were successfully proven by the College. As noted in the Conduct Decision, the allegations that were not proven came close to the requisite standard. It was reasonable for the College to advance those allegations and the issues were clearly important. Some of the evidence that was led in relation to the allegations that were not proven would still have been introduced as it was relevant context and background to the allegations that were successful. Nevertheless, the two allegations that were not proven were important ones, and the Panel considers that, in this case, fairness to the Respondent requires some reduction to account for the mixed success. Accordingly, the Panel has decided to reduce the total claim for costs and disbursements of \$33,152.18 by \$5000, such that the total order is \$28,152.18.

76. The Panel considers that the proposed period for payment of costs is relatively short in the circumstances of this case and has decided that costs must be paid within six months or by a date agreed to in writing by the parties.

D. ORDER

77. The Panel orders:
- a. The Respondent is reprimanded;
 - b. The Respondent is suspended for six months, to be served commencing the date of the Respondent's reinstatement in the event that he successfully applies for registration with the College in the future;
 - c. The Respondent shall pay the College costs and disbursements in the amount of \$28,152.18 within six months of the date of this order or by a date agreed to in writing by the parties.

Delivery and Public Notification

78. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.
79. The Panel directs that the Registrar publish notification of the disposition of this matter pursuant to sections 39.3 of the Act.

Notice of Right to Appeal

80. The Respondent is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the date on which this Order is delivered.

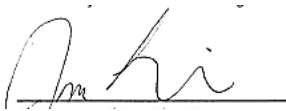
Dated: December 1, 2023



Marilynne Waithman, Chair



Emily Bissonette, RMT



Jennifer Lie, RMT