

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* RSB/C 1996, c.183

BETWEEN:

College of Massage Therapists of British Columbia

(the "College")

AND:

Joanne Argatoff

(the "Respondent")

REASONS FOR DECISION

Date and Place of Hearing:

February 22, 2022

By video-conference

Panel of the Discipline Committee (the "Panel")

Deborah Charrois, Chair

Arnold Abramson

Michael Wiebe, RMT

Counsel for the College:

Elizabeth Allan

Jennifer Crosman

The Respondent:

Did not attend

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”), to determine whether Joanne Argatoff (the “Respondent”) failed to comply with the HPA or the College’s Bylaws; failed to comply with a standard imposed under the HPA, that is, the College’s Code of Ethics and/or Standards of Practice; and committed professional misconduct or unprofessional conduct (the “Discipline Hearing”).
2. For the reasons that are set out below, the Panel finds that the allegations set out in the amended citation dated January 24, 2022 (the “Citation”)¹ were proved to the requisite standard. The Panel has determined that the Respondent breached the College’s Bylaws, breached the College’s Code of Ethics, and committed unprofessional conduct.

B. BACKGROUND

3. The particulars of the allegations against the Respondent are set out in the Citation as follows:
 1. Between approximately October 1, 2019 and January 1, 2020, while you were a Practising Registrant, you practiced massage therapy without professional liability insurance coverage;
 2. Between approximately February 7, 2020 and today’s date, you failed to reply to communications from the CMTBC in a timely or responsive manner, or at all, regarding the expiration of your professional liability insurance coverage and lack of communication regarding same, including the following communications from CMTBC:
 - a. A letter sent by email and registered mail dated February 7, 2020;
 - b. A letter sent by email and registered mail dated March 4, 2020;
 - c. An email dated March 25, 2020;
 - d. An email and letter sent by regular mail dated April 2, 2020;
 - e. An email and letter sent by registered mail dated June 22, 2020;

¹ The original citation was issued on July 30, 2021.

- f. An email and letter sent by regular mail dated July 3, 2020;
- g. A letter sent by email dated September 1, 2020;
- h. A letter sent by process server dated September 1, 2020;
- i. A letter sent by process server dated September 16, 2020;
- j. A letter sent by email dated October 17, 2020;
- k. An email dated October 23, 2020;
- l. A letter sent by email dated November 16, 2020; and
- m. A letter sent by email and regular mail dated January 13, 2021.

It is alleged:

- 1. That you have not complied with the Act or a bylaw;
- 2. That you have not complied with a standard imposed under the Act, that is, CMTBC's Code of Ethics and/or Standards of Practice; and
- 3. That you have committed professional misconduct or unprofessional conduct.

Pre-hearing orders

- 4. The College notified the Panel and the Respondent that it intended to seek several pre-hearing orders. The Panel set a schedule for exchange of written submissions on those issues. On November 12, 2021, the College delivered its application materials seeking pre-hearing orders that:
 - a. the Discipline Hearing be conducted by video-conferencing in accordance with the protocol submitted by the College;
 - b. the College be permitted to adduce the evidence of the College witnesses by affidavit; and
 - c. any witness may give their testimony by video-conference in accordance with the protocol.
- 5. The Respondent was provided with an opportunity to respond to the College's application materials by November 18, 2021. The Panel decided to grant the orders sought on the terms proposed by the College and indicated that reasons would

follow. The Panel decided to grant all the College's pre-hearing orders for the following reasons.

6. The requested directions were uncontested by the Respondent. Similar orders have been made by the Discipline Committee in other matters. The Panel possesses the authority to make the orders sought pursuant to section 38(4.2) of the HPA.
7. The Panel held that the Discipline Committee should proceed by video-conference as the state of the pandemic and provincial Public Health Officer guidance continued to recommend masking and was continuing to evolve over time. There would have been at minimum seven persons present at all times. The Respondent's last known address indicated that she did not reside in Vancouver. The Panel was satisfied that a Discipline Hearing held by video-conference would preserve fairness to the parties in the context of a professional regulation case for the reasons set out in *Law Society of Ontario v. Regan*, 2020 ONLSTA 15 at paragraphs 10 to 15. The Discipline Hearing was held in public. All of the procedural fairness protections set out in the HPA, and which exist in administrative law generally, remained intact. An order for the Discipline Hearing to proceed by video-conference ensured the legitimate interests of the parties as it was consistent with the public health guidelines, with the College's public protection duties under the HPA, and was an efficient manner in which to hold a disciplinary process. The order was also consistent with recent similar orders such as *Re Henniger* (October 22, 2020) and *Re Krekic* (February 17, 2021). For these same reasons, the Panel also found it reasonable and fair to allow any witnesses to testify by video conference.
8. The Panel decided that the College should be permitted to enter evidence by affidavit. The HPA requires that witness testimony is taken on oath and allows for the right of cross-examination. An affidavit meets those requirements. The affidavit is a sworn statement taken under oath or affirmation. The deponent may be cross-examined. In this case, the Panel considered that the College's evidence would be particularly useful in affidavit form as it attached the records of insurance, correspondence and attempts to communicate with the Respondent. The Panel found that allowing the College to introduce its case by affidavit provided the

Respondent with maximum notice of the case well in advance of the hearing, and it was efficient and cost effective by reducing the length of the hearing.

Adjournment and Non-Attendance

9. The Discipline Hearing in this matter was originally scheduled to commence at 9:30 a.m. on December 15, 2021 and was held via video conference with Charest Reporting as the hearing administrator. Shortly after the hearing was called to order, the College provided the Panel with email communications between College counsel and the Respondent dated December 8 and 14, 2021 regarding the Respondent's participation in the Discipline Hearing. Based on these communications, the Panel decided to adjourn the Discipline Hearing and reset it to a specific date with further orders that

- a. The Discipline Hearing is adjourned and reset to February 22, 2022 commencing at 9:30 AM;
 - b. By February 8, 2022, the Respondent is ordered to produce to the College medical evidence from a psychologist or psychiatrist relating to the issues in citation and her participation in the disciplinary process including the hearing itself;
 - c. By February 8, 2022, the Respondent is ordered to produce to the College an outline of her anticipated evidence in accordance with section 38(4.1) of the HPA;
 - d. Paragraph 2(j) of the citation is amended from "A letter sent by email dated October 16, 2020" to "A letter sent by email dated October 17, 2020"; and
 - e. The College is directed to deliver the amended citation to Ms. Argatoff.
10. The Discipline Hearing reconvened on February 22, 2022 at 9:30 a.m. The Respondent did not attend. The Panel waited a reasonable period of time for the Respondent to arrive. The College attempted to contact the Respondent. The College then made submissions on proceeding with the Discipline Hearing in the Respondent's absence. The College provided proof of service of the Citation, and the Panel was satisfied that the Respondent was properly served with the Citation,

which set out the charges against her and the date and place for the Discipline Hearing. Accordingly, the Panel decided pursuant to section 38(5) of the HPA to proceed with the Discipline Hearing in the Respondent's absence.

11. Having decided to proceed in the Respondent's absence at the Discipline Hearing, the Panel recognizes that it is not entitled to take the Respondent's absence as an admission of the allegations against her. In *Xu (Re)*, 2019 CanLII 131132, the College of Dental Surgeons of British Columbia reviewed when it is appropriate to draw an adverse inference from the failure to attend a hearing or the failure to testify:

364. The College invited the Panel to draw an adverse inference from Dr. Xu's failure to attend the hearing that he had no defence, explanation or excuse for his conduct. The College cited the Manitoba decision of *Cross v. Wood*, [1993] M. J. No. 648, in which the Court of Appeal adopted the language from *R. v. Johnson*:

It is not so much that the failure to testify justifies an inference of guilt; it is rather that it fails to provide any basis to conclude otherwise...If the Crown's case cries out for an explanation, an accused must be prepared to accept the adverse consequences of his decision to remain silent....

365. The College contrasted Dr. Xu's absence at the hearing with the effort the witnesses made to attend the hearing. The Panel recognizes the effort witnesses made to attend the hearing and give evidence. Some witnesses were elderly and in poor health, others missed work uncompensated and others made a long commute to attend. The Panel also acknowledges that for some patients it was uncomfortable to give their evidence at a formal hearing. It was clear that for all the witnesses, their dealings with Dr. Xu had a significant emotional and financial impact on them and their families. The Panel also acknowledges the difficulty the College faced as a result of Dr. Xu failing to attend and failing to provide the College with patient charts.

366. In *R. v. Johnson*, the Ontario Court of Appeal clarified when it is appropriate to draw an adverse inference when the accused fails to testify. The Court of Appeal clarified that it is not proper to use a failure to testify to prove a case beyond a reasonable doubt and that the failure to testify does not justify an inference of guilt. However, if the finder of fact is satisfied beyond a reasonable doubt that the evidence is true, and the facts cry out for a response from the accused, the trier of fact may draw an inference unfavourable to the accused who did not testify.

12. This approach was adopted in *CMTBC v. Morgan* (June 8, 2021). This Panel also considers this to be a correct statement of the applicable principles.

C. LAW

Burden of Proof

13. The College bears the burden of proof and must prove its case on a “balance of probabilities”. The leading authority, *F.H. v. McDougall*, 2008 SCC 53, states that the “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” This standard is routinely adopted in professional regulation proceedings and has recently been applied by the Discipline Committee in *CMTBC v. Gill*, 2019 CMTBC 01 and *Re Morgan*.

Rules of Evidence

14. The College cites *Canadian Recording Industry Association v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322 and submits that in accepting proof of the allegations, the Panel is not bound by the traditional rules of evidence. It may admit evidence that ordinarily may not be admissible in a court proceeding. The Panel agrees that it is not bound by the traditional rules of evidence. The Panel is entitled to consider any evidence it deems relevant, accepting portions of some and rejecting others as it sees fit: *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358.

Credibility

15. The British Columbia Court of Appeal described the assessment of credibility leading in *Faryna v. Chorny*, (1952) 2 D.L.R. 354 (B.C.C.A.) as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

16. The College cited *Ontario (College of Massage Therapists of Ontario) v. Tchepourov*, 2019 ONCMTO 4 which set out the following factors for the assessment of a witness’s credibility:

The Panel accepts that credibility of the witnesses should be assessed according to the factors set out in *Re Pitts*. These factors include:

- a. the witness' opportunity to observe events;
- b. the witness' interest in the outcome;
- c. any bias on the part of the witnesses;
- d. whether the witness' evidence accords with common sense/the probability or improbability of the witness' story;
- e. whether the witness' evidence was consistent with other evidence;
- f. whether the witness' evidence was internally consistent; and,
- g. the appearance and demeanour of the witnesses.

17. This Panel also finds these factors to be useful and appropriate in the assessment of credibility.

HPA

18. Under section 39(1) of the HPA, on completion of a hearing, the Discipline Committee may dismiss the matter, or determine that the Respondent:

39(1)...

- (a) has not complied with this Act, a regulation or a bylaw,
- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

Jurisdiction over Former Registrant

19. The Respondent became a former registrant of the College on December 31, 2022.

20. The Discipline Committee has jurisdiction over the Respondent as a former registrant under the HPA. Section 26 of the HPA, which applies to Part 3 of the Act

dealing with inspections, inquiries and discipline, expressly defines “registrant” for the purposes of that section to include a “former registrant”.

Bylaws and Code of Ethics

21. Section 19 of the HPA provides the College with the authority to enact bylaws establishing the standards and limits for the practice of the profession.
22. Section 19(1)(l) of the HPA authorizes the College’s Board to make bylaws that establish standards of professional ethics for registrants. Section 19(1)(o) of the HPA authorizes the College’s Board to make bylaws that establish requirements respecting maintenance of professional liability protection or insurance coverage by registrants.
23. Section 1(2) of the College’s Bylaws defines the Code of Ethics as “the Codes of Ethics established by the Board under section 19(1)(l) of the Act”.

24. The College’s *Code of Ethics* in effect at the materials times stated:

Duty to the Profession

...

28. Massage therapists must respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner.

25. Section 75 of the College’s Bylaws provides:

Code of Ethics, Standards of Practice and Patient Records

75 Every Registrant must comply with

- (1) the Code of Ethics,
- (2) the Standards of Practice established by the Board, and
- (3) the rules and requirements for Patient Records set out in Schedule “E”.

26. Section 61 of the College’s Bylaws provides:

Liability insurance

61 (1) Each Practising Registrant must obtain and at all times maintain professional liability insurance coverage in an amount of at least \$2,000,000 per claim or per occurrence, in a form that is satisfactory to the College.

(2) For a period of at least 5 years after the grant of non-practising registration under section 48, a Non-practising Registrant who did not have occurrence-based

coverage immediately prior to the time at which non-practising registration was granted must maintain professional liability insurance coverage in the amount per claim and form specified in subsection (1) against liability arising from the practice of massage therapy while the Non-practising Registrant was a Practising Registrant.

Professional Misconduct and Unprofessional Conduct

27. Section 26 of the HPA contains the following definitions:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

[...]

"unprofessional conduct" includes professional misconduct.

28. The term unprofessional conduct is defined in the HPA to include professional misconduct.

29. One of the most cited definitions in British Columbia for professional misconduct is from *Law Society v. Martin*, 2005 LSBC 16, where it was described as a "marked departure from the standard expected of a competent [registrant]".

30. In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, professional misconduct was described by the Supreme Court of Canada as conduct that would reasonably be considered by members of the profession as "disgraceful, dishonorable, or unbecoming of a member of the profession by his well-respected brethren in the group – persons of integrity and good reputation amongst the membership".

31. In *Millar v. College of Physicians and Surgeons of British Columbia*, [1994] B.C.J. No. 967 (QL), the British Columbia Supreme Court approved the Black's Law Dictionary definition of "unprofessional conduct" as being conduct "which violates ethical code or rules of profession or such conduct which is unbecoming member of profession in good standing."

32. The above authorities have been repeatedly relied upon by Discipline Committee (see for example, *Re Gill* and *Re Morgan*).

D. EVIDENCE and ANALYSIS

33. The College relied upon two affidavits in its case:
 - a. The affidavit of Carrie-Lee Godfrey (October 6, 2020); and
 - b. The affidavit of Kate Parisotto (November 30, 2021).
34. Ms. Parisotto's evidence was as follows. She has been the Director of Inquiry and Discipline at the College since October 2015 (though her full title is now Deputy Registrar and Director, Inquiry, Discipline and Quality Assurance). Ms. Parisotto set out and appended the history of the College's communications with the Respondent related to her insurance, lack of communication with respect to her lapsed insurance and, her general lack of communication with the College.
35. The Respondent became a registrant of the College on May 1, 2013. She has no prior disciplinary history. At the time of the Parisotto affidavit, the Respondent was a practising member of the College. Registrants are required to renew their registration with the College every year. Since 2017, there has been an online registration portal where registrants can upload the required documents to complete that process. Previously, there had been a database.
36. It is also a requirement that all registrants provide up to date contact information to the College. This includes the registrant's home address, telephone number and email address. Ms. Parisotto set out the Respondent's most recent personal contact information in the College's file. Her home address remained the address in the College's file at all material times. The Respondent's email address appears not to have changed since she became a registrant of the College. The Respondent received documents and communicated with the College from the addresses on record with the College.
37. The College's Bylaws require registrants to maintain certain liability insurance in a form acceptable to the College. The Respondent had liability insurance, proof of which she provided to the College, that expired on October 1, 2019 at 12:01 a.m. Although it is a registrant's responsibility to maintain insurance coverage and the College has no obligation to monitor this, the College brought the lack of insurance

coverage to the attention of the Respondent on November 19, 2019 and December 18, 2019. The Respondent's next insurance policy was effective January 1, 2020 at 12:01 a.m.

38. The College requested a response from the Respondent 13 times over the course of an 11-month period. With one exception, these requests were neither acknowledged nor responded to. The College brought the Respondent's obligation to respond to her governing body to her attention on four occasions. Specific reference was made to the Respondent's obligation pursuant to section 28 of the Code of Ethics and her obligation at common law. The College followed up on missed deadlines on at least three occasions by email and phone. The College engaged a process server to personally serve the Respondent. Despite these efforts, the Respondent still did not substantially respond to the College.
39. The Respondent did communicate with the College once. On March 4, 2020, the College delivered a letter from Ms. Parisotto to the Respondent by email and registered mail. Ms. Parisotto set out the period during which the Respondent did not have professional liability insurance and requested a detailed written response to questions and production of certain billing and treatment records. The deadline to respond was March 25, 2020. The College made numerous follow up efforts. On October 23, 2020, the Respondent emailed another staff member at the College and attached patient records. Ms. Parisotto emailed the Respondent the same day to advise that the Respondent had not fully responded to the College's requests for information and records. Ms. Parisotto set out the outstanding information again. Ms. Parisotto received no response to her October 23, 2020 communication to the Respondent.
40. The Respondent acknowledged by email to the College that:
 - a. She allowed her liability insurance to lapse;
 - b. She received an email from her insurance company before her insurance expired;

- c. Allowing her insurance to lapse was unacceptable, there was no excuse, there was a significant gap in her liability insurance; and
 - d. She knows that ignoring important deadlines is very unprofessional behaviour.
41. The Respondent provided records showing that she performed 63 massages on 31 different patients from October 1, 2019 to December 31, 2019, the period during which the Respondent did not have liability insurance coverage.
42. Ms. Godfrey's Affidavit sets out that she effected personal service of the following CMTBC documents on the Respondent:
- a. Letter dated September 16, 2020;
 - b. Letter dated September 1, 2020;
 - c. Notice of Investigation Letter dated February 7, 2020;
 - d. Letter dated March 4, 2020;
 - e. Letter dated April 2, 2020;
 - f. Notice of Expanded Investigation Letter dated June 22, 2020;
 - g. Letter dated July 3, 2020; and
 - h. Letter dated September 1, 2020.
43. The Panel found Ms. Parisotto's evidence to be credible and reliable. It was consistent and in harmony with the preponderance of the probabilities. The Panel also found Ms. Godfrey's evidence to be credible and reliable for the same reasons.

Allegation 1

Between approximately October 1, 2019 and January 1, 2020, while you were a Practising Registrant, you practiced massage therapy without professional liability insurance coverage

44. There is no dispute that the Respondent did not have liability insurance coverage from 12:01 a.m. on October 1, 2019 through midnight of December 31, 2019. The

Respondent admitted in writing to the College that she allowed her insurance to lapse.

45. The Panel finds that the Respondent performed 63 massages during the period of time when she did not have insurance coverage. As such, the Panel finds that between approximately October 1, 2019 and January 1, 2020, while the Respondent was a registrant, she practiced massage therapy without professional liability insurance coverage.
46. The Panel finds that the Respondent knew she was practising without professional liability insurance coverage because her insurance provider and the College contacted her about this on three occasions, including once before her insurance expired.
47. The Panel agrees with the College's submissions that it "is no answer that the Respondent was confident that there was "no chance" that she would receive a misconduct complaint or injure a client, whether because she listens carefully to every client or otherwise. There is no exemption from the Bylaw for those who deem themselves as listening carefully to their patients and, in any event, injuries may happen even when the practitioner is exercising care." The Panel does note that the Respondent's admission of conduct and the remorse she expressed may be relevant at the penalty stage of these proceedings.
48. The Panel finds that the College has proven allegation 1 on a balance of probabilities.
49. The Panel has determined that the Respondent breached section 61 of the College's Bylaws which requires registrants to obtain and at all times maintain professional liability insurance coverage in a designated amount and in a form satisfactory to the College.
50. In *Ontario (College of Pharmacists) v. Metellus*, 2009 ONCPDC 13, a registrant had moved but not updated his address with his college and failed to obtain professional liability insurance. The registrant agreed that his actions constituted professional misconduct.

51. In *Ontario (College of Physiotherapists of Ontario) v. Shah*, 2019 ONCPO 26, the panel explained the importance of the liability insurance requirement to protect members of the public:

The public is entitled to assume that Physiotherapists hold appropriate insurance so they are protected in the event of injury due to the negligence of a member or due to anyone for whom the member is legally responsible. The protracted amount of time, namely 18 months, during which Mr. Shah practiced without insurance was an aggravating factor in determining his penalty. The Member was not acting in the best interest of his patients during this time period and exposed them to the potential for significant harm.

52. Practising massage therapy without insurance is not acceptable. The insurance requirement in the College Bylaws exists to protect patients, which is part of the College's duty to protect the public as expressed in section 16 of the HPA. The College submits that a determination of unprofessional conduct is appropriate in the circumstances. The Panel agrees that the Respondent's failure to maintain professional liability insurance violates the "rules of profession". The Panel has determined that the Respondent committed unprofessional conduct.

Allegation 2

Between approximately February 7, 2020 and today's date, you failed to reply to communications from the CMTBC in a timely or responsive manner, or at all, regarding the expiration of your professional liability insurance coverage and lack of communication regarding same, including the following communications from CMTBC:

- a. A letter sent by email and registered mail dated February 7, 2020;***
- b. A letter sent by email and registered mail dated March 4, 2020;***
- c. An email dated March 25, 2020;***
- d. An email and letter sent by regular mail dated April 2, 2020;***
- e. An email and letter sent by registered mail dated June 22, 2020;***
- f. An email and letter sent by regular mail dated July 3, 2020;***
- g. A letter sent by email dated September 1, 2020;***
- h. A letter sent by process server dated September 1, 2020;***
- i. A letter sent by process server dated September 16, 2020;***

- j. A letter sent by email dated October 17, 2020;*
- k. An email dated October 23, 2020;*
- l. A letter sent by email dated November 16, 2020; and*
- m. A letter sent by email and regular mail dated January 13, 2021.*

53. The two affidavits before the Panel establish that all the above communications were sent to the Respondent. The communications contain requests ranging from an acknowledgement of receipt of the correspondence to requests for specific information and documents.
54. The communications were variously delivered by email, regular mail, registered mail, and delivered by a process server. The February 7, 2020 letter by registered mail was returned unclaimed. There is no indication that all the other communications were not received.
55. The College has shown that at the material times, the Respondent lived and worked at the addresses that the College had on file. In many cases, the College had a delivery confirmation of the email sent. Moreover, the Respondent corresponded with the College from the relevant email address.
56. The Panel finds that each of the communications particularized in allegation 2 of the Citation were clearly established in the College's affidavits. The Panel finds that the evidence establishes that the Respondent failed to respond to communications from the College in a timely or responsive manner, or at all, regarding the expiration of her professional liability insurance coverage. Apart from the email at Exhibit "P" of Ms. Parisotto's Affidavit, the Respondent did not respond to the College at all. For the reasons set out above, the Panel finds that the Respondent's response at Exhibit "P" was not adequate. The College has proven allegation 2 of the Citation on a balance of probabilities.
57. As noted above, section 28 of the Code of Ethics required massage therapists to respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner. The Panel has determined that the Respondent failed to comply with the requirements set out in section 28 of the Code of Ethics.

58. The importance of the duty to cooperate with a regulator was discussed in *Kaburda v. College of Dental Surgeons of British Columbia*, 2001 BCSC 1326 (at paragraph 21):

There is a general duty on all members of self-governing professions to cooperate with their governing bodies (*Artinian v. College of Physicians and Surgeons* (1990), 73 O.R. (2d) 704 (Ont. H.C.J.). This duty has to some extent been codified in the Rules of the College.....

...

26 The appellant had a duty to cooperate by replying to the Deputy Registrar's request. A reply that is not responsive to the request authorized by Rule 16.03(b) will, if not offered in good faith and reasonably based, support a determination that the registrant has engaged in unbecoming conduct.

59. The Respondent's communications do not set an appropriate standard for communicating with a registrant's regulatory body. A registrant's duty to cooperate with a College investigation is critical to the functioning of a self-regulating body. The Respondent's failure to respond to communications from the College in relation to the expiration of her professional liability insurance coverage was serious and occurred multiple times over a significant period of time.
60. Hearing panels of health regulators in this province have found that a failure to respond constitutes unprofessional conduct. See *Re Cunningham*, February 3, 2017 from the College of Registered Nurses of British Columbia (now the British Columbia College of Nurses and Midwives) and *Law Society of British Columbia v. Robert John Cuddeford*, 2010 LSBC 11.
61. The Panel has determined that the Respondent's conduct constitutes unprofessional conduct for the reasons outlined in the decisions cited above, and the *Re Gill* decision in particular, which involved a failure to respond where partial responses were provided. The Panel has decided that a determination of unprofessional conduct is appropriate.

F. ORDER

62. In summary, the Panel finds that the College has proven all the allegations in the Citation to the requisite standard.
63. Pursuant to section 39(1) of the HPA, the Panel has determined that the Respondent:
- a. Breached the College's Bylaws and has committed unprofessional conduct in relation to the allegation at paragraph 1 of the Citation; and
 - b. Breached the College's Code of Ethics and has committed unprofessional conduct in relation to the allegation at paragraph 2 of the Citation.

Schedule for Submissions on Penalty and Costs

64. The Panel directs that the parties provide written submissions regarding the appropriate penalty and costs.
65. The Panel directs that the parties provide the written submissions in accordance with the following schedule:
- a. Submissions must be delivered by counsel for the College to the Respondent and the Panel by no later than March 28, 2023;
 - b. Submissions must be delivered by the Respondent to counsel for the College and the Panel by no later than April 18, 2023; and
 - c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by no later than April 25, 2023.

Notice of Right to Appeal

66. 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.

Delivery and Public Notification

67. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.
68. The Panel directs that pursuant to sections 39.3(1)(d) of the Act, the Registrar notify the public of the determination made herein.

Dated: March 7, 2023



Deborah Charrois, Chair



Arnold Abramson



Michael Wiebe