

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:

Joanne Argatoff

(the “Respondent”)

REASONS FOR DECISION

Date and Place of Hearing:

In writing

Panel of the Discipline Committee (the “Panel”)

Deborah Charrois, Chair

Arnold Abramson

Michael Wiebe, RMT

Counsel for the College:

Elizabeth Allan

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”), 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. On March 7, 2023, the Panel released its decision (the “Conduct Decision”) which found that the allegations set out in the amended citation dated January 24, 2022 (the “Citation”) were proved to the requisite standard. The Panel determined that the Respondent breached the College’s Bylaws, breached the College’s Code of Ethics, and committed unprofessional conduct.
3. The Panel set a schedule for written submissions on penalty and costs. The College provided submissions. The Respondent did not provide any submissions.
4. The College seeks the following orders pursuant to section 39 of the HPA:
 - a. a reprimand against the Respondent pursuant to section 39(2)(a) of the HPA;
 - b. the Respondent is suspended for three months, to be served commencing the date of the Respondent’s reinstatement in the event that she successfully applies for registration with the College in the future; and
 - c. that the Respondent pay costs and disbursements in the amount of \$7,110.13 pursuant to section 39(5) of the HPA, which shall be payable within 90 days of the date of the Panel’s order.
5. For the reasons that follow, the Panel has decided to grant the orders that the College seeks.

B. LAW

6. The Respondent was a registrant of the College at the time of this hearing. The Respondent is no longer a registrant of the College. The Respondent failed to renew her registration for 2023.
7. This Panel retains jurisdiction to make orders respecting penalty, costs, and publication in this case. Section 26 of the HPA defines “registrant” to include “a former registrant” for the purposes of Part 3 of the HPA, which includes discipline proceedings. This approach is consistent with several decisions by this tribunal including *Re Gill* 2019 CMTBC 01, *Re Morgan* (June 8, 2021) and *Re Krekic* (December 21, 2022), as well as decisions by other tribunals such as *College of Nurses of Ontario v. Dumchin*, 2016 ONSC 626.
8. Having made a determination under section 39(1) of the HPA that the Respondent breached the College’s Bylaws, breached the College’s Code of Ethics, and committed unprofessional conduct, the Panel must decide what, if any, penalty is appropriate.
9. 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).
10. 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.

11. Two of the central purposes underlying the imposition of penalties in disciplinary proceedings are protection of the public and preservation of public confidence in the regulation of the profession. Courts and discipline panels have identified factors to consider when imposing penalties. *Law Society of BC v. Ogilvie*, 1999 LSBC 17 set out a number of factors which were subsequently consolidated in *Law Society of BC v. Dent*, 2016 LSBC 05:

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?

12. The *Ogilvie / Dent* approach has been repeatedly applied in professional regulation cases in British Columbia, including by the Discipline Committee in *Re Gill*, *Re Morgan* 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

13. The Panel agrees with and accepts the College's submissions.
14. In the Conduct Decision, the Panel found that the allegations in the Citation were proved on a balance of probabilities. The Panel found that the Respondent performed 63 massages on 31 different patients during a three-month period and that she knew she was practicing massage therapy without insurance during that time. The Panel found that this was a breach of the College's Bylaws and unprofessional conduct. 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.
15. In the Conduct Decision, the Panel also found that the Respondent failed to respond or fully respond to 13 communications with the College. This occurred over a period of 11 months. The College engaged a process server to communicate with the Respondent. The Panel found the Respondent's failure to respond or fully respond to the College was a breach of the College's Code of Ethics and unprofessional conduct. The Panel held that a registrant's duty to cooperate with a College investigation is critical to the functioning of a self-regulating body and that 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.

16. In respect of both Citation allegations, the proven conduct was serious and did not involve a single instance of lapsed judgment or a single missed communication. The conduct occurred multiple times over many months.
17. There is no information before the Panel as to the consequence (or lack thereof) of the Respondent's conduct.
18. The Panel considers that this factor favours the imposition of a more serious penalty.

Character and Professional Conduct Record of the Respondent

19. The Respondent is currently in her late 30s. She became a registrant of the College on May 1, 2013. The Respondent has no prior disciplinary history. The Respondent was a registrant with the College between May 1, 2013 and January 2, 2020 and January 10, 2020 until January 1, 2023.
20. The College submits that the Respondent's lack of disciplinary history can be considered a mitigating factor, while the Respondent's age and experience are an aggravating factor. The College submits that any mitigating factors under this heading are negated by the aggravating ones. Failing to respond to your regulator is a very basic principle which all registrants ought to be aware of and comply with, and certainly a seven-year registrant ought to so do.
21. The Panel agrees with the College's submission. The Respondent's lack of disciplinary history is a mitigating factor. The Respondent's age and experience are an aggravating factor. She had been a registrant for approximately seven years at the time of the conduct and her conduct cannot be excused by inexperience.
22. Overall, the Panel considers this factor to be neutral given the presence of both mitigating and aggravating aspects.

Acknowledgement of the Misconduct and Remedial Action

23. Prior to the hearing, the Respondent acknowledged her conduct in an email to Ms. Parisotto dated January 9, 2020:

.....I also received an email from the insurance company before [my insurance] expired that I don't remember seeing at the time. I don't know if it was filtered or

what happened at the time it was sent to me. This is of course unacceptable and I know there is no excuse.

...

I know there is a significant gap in the liability insurance. I just want to add that there is no chance I have had a misconduct complaint or an injury to a client. I know ignoring important deadlines is very unprofessional behaviour, but at the clinic I pride myself in listening carefully to every client and I am positive the college will not hear any complaints about me.

I would also like to add I am extremely remorseful about my actions and will be careful next year and every year forward if I am allowed to continue working as an RMT.

24. On December 14, 2021, the Respondent provided the following additional information in an email to College counsel:

I am very sorry I haven't been communicating with you about this. I am extremely overwhelmed at this time in my life (I don't know where to begin to tell you about what has been happening) and have been performing life triage, taking care of tragedies and "putting out fires" as they come for a couple of years now. Every time I try to read the legal emails I have trouble understanding them and get anxious about responding. Writing back has been in my to do list every day, but so far haven't brought myself to start writing. I've written this letter in my head 100 times. I'm terrified of losing my RMT license or getting a fine large enough that I can't pay, essentially losing my license, but at this time I am emotionally and physically incapable of reading, understanding and responding to the emails. I wish this were happening at a different time, but of course this chaos is also why I let my insurance lapse in the first place. I don't know if I can log in and participate in the hearing tomorrow. I understand how important it is, but with December being so busy in addition to everything going on, my anxiety is too debilitating at this time. Do you think my attendance would help much? In your experience do you believe I can help the outcome?

25. Following the above communication, the Panel adjourned the hearing and provided the Respondent with time and an opportunity to provide medical evidence from a psychologist or psychiatrist relating to the hearing issues and her ability to participate in the disciplinary process. None was provided. The hearing subsequently reconvened and concluded.
26. The College submits that the Respondent acknowledged that she practiced without insurance for which she said there was no excuse, and that ignoring important deadlines was unprofessional for which she was remorseful; however, she

continued to ignore deadlines and communications from the College without any detailed explanation at the time.

27. The College acknowledges the Respondent's statement in December 2021 that she was experiencing what she characterised as tragedies, having difficulty reading and understanding legal documentation and experiencing anxiety which is why she has been non-responsive and let her insurance lapse in the first place; however, no medical evidence on this point was received.
28. The College notes that all registrants have an obligation to ensure that they are fit to participate in the College's regulatory process and are fit to practice (as set out for example, in sections 14, 32, 33 and 34 of the *Code of Ethics*).
29. The Panel agrees with the College's submission that while it may consider the information in the Respondent's email of December 14, 2021, absent any medical evidence, it is not a justification or an excuse for the misconduct.
30. The College submits that any mitigation arising from the Respondent's acknowledgement about failing to obtain and upload her insurance in time in January 2020 is negated by her continued unprofessional conduct through January 2021.
31. The College notes that if a respondent is receptive to remediation or rehabilitation, this may mitigate the penalty imposed. The College is not aware of any remedial action taken by the Respondent.
32. The College also notes that the Respondent's failure to attend the hearing, or her failure to respond to the College's submissions, should not be considered by the Panel as an "additional" failure to respond, or a lack of remediation. It is her right not to participate in these proceedings if she so chooses.
33. The Panel agrees with the College's submissions. The Panel finds that the Respondent did acknowledge some of her conduct, however, this is negated by her continued unprofessional conduct through January 2021. The Panel was not provided with evidence of any remedial or rehabilitative efforts undertaken by the Respondent. Overall, the Panel finds this factor to be neutral given the presence of both mitigating and aggravating aspects.

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

34. The College submits that the Respondent's conduct harms the profession. The College submits that the penalty in this case should demonstrate to the profession the seriousness with which the College treats the obligation to protect the public and the duty to cooperate and deter others from similar conduct. The College submits that this is the general deterrent value in the College's proposed sanction.
35. The College submits that the Respondent also needs to understand her obligations to comply with the College's Bylaws and Standards should she ever be reinstated. There should be enough of an element of specific deterrence that the public will not be placed at risk again.
36. The Panel finds that there is a need for specific deterrence and general deterrence, as well as a need to maintain public confidence in the profession in this case. The multiple instances of misconduct over multiple months call for specific deterrence. The Respondent needs to understand her obligations to comply with the College's Bylaws and Standards if she is reinstated in future. In terms of general deterrence, there is a need to send a clear message to the profession of the importance of cooperating with the College and maintaining professional liability insurance. The requirement to cooperate with the College is foundational to the College's ability to regulate the profession and act in the public interest. A lack of cooperation risks undermining public confidence in the College's ability to regulate the profession. An adequate penalty will enhance the public confidence in the profession and in the disciplinary process.
37. The Panel finds that this factor weighs in favour of the imposition of a more serious penalty.

Caselaw

38. The College referred to several decisions with similar circumstances:

- a. *Ontario (College of Pharmacists) v. Metellus*, 2009 ONCPDC 13) a one-month suspension for practising without insurance was agreed upon by the parties.
- b. *Ontario (College of Physiotherapists of Ontario) v. Shah*, 2019 ONCPO 26 a suspension of 18 months (amongst other terms) was imposed for practising without insurance.
- c. *Re Krekic* cancellation (amongst other terms) was imposed for practising without insurance and engaging in other forms of misconduct. The other misconduct in *Krekic* was far more serious than the conduct at issue in this matter.
- d. *Kaburda v. College of Dental Surgeons*, 2002 BCSC 870 the registrant was suspended for four weeks (and was ordered to remain suspended until he provided the College with a response), fined \$10,000 and costs were imposed for failing to respond.
- e. *The College of Physicians and Surgeons of British Columbia re Dr. Jeannine Olszewski* (November 2016) involved a registrant who failed to respond to correspondence from the College over a period of approximately five months, failed to attend a scheduled meeting at the College, and refused to cooperate in a practice review. She had a prior discipline history involving similar misconduct. She was ordered to be suspended for three months, amongst other terms.
- f. *The College of Registered Nurses of British Columbia v. Cunningham* (February 6, 2017) involved a registrant who failed to respond to various communications from the College. The registrant was suspended until the later of the following two events: (a) the expiry of a three-month suspension period; and (b) the registrant delivering a substantive written response to the outstanding requests.
- g. *Re Gill* the registrant was subject to a reprimand, and the later of a three-month suspension and delivery of written responses to outstanding

questions. The registrant had a prior disciplinary history but he did not practise without insurance as occurred in this case.

39. The Panel has considered all of these cases and finds the *Olszewski* and *Cunningham* cases to be the most similar to the circumstances of this case. Considering all of the *Ogilvie / Dent* factors, the relevant caselaw, and the totality of the circumstances of this case, the Panel finds that a reprimand and a suspension of three months is necessary to uphold and protect the public interest. The Panel expects that sanction to achieve a specific and general deterrent effect, and to maintain confidence in the integrity of the profession.
40. The College notes that section 39(2)(c) of the HPA permits the Panel to suspend the Respondent's registration, and section 39(8)(b)(i) permits that if this occurs, the Panel may direct that the lifting of the suspension will occur on a date specified in the order. The College submits that the date specified should be three months after her registration with the College recommences. The Panel agrees.

Costs

41. 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.
42. Section 72 of the College's Bylaws establishes a tariff of costs pursuant to the HPA, set out in Schedule "F" to the Bylaws.
43. The Bylaws provide that before renewal or reinstatement of registration, the Registrar must receive any outstanding debt owed to the College under the HPA.
44. The College claims \$7,110.13 in costs and disbursements.
45. The College prepared a Bill of Costs in accordance with the tariff at Schedule "F" of the Bylaws. The amount of costs claimed pursuant to the tariff is \$3,500.00. The units assigned reflect that this was a matter of ordinary difficulty. The materials confirm that the amount sought is less than 50% of the actual costs to the College for legal representation for the purposes of this matter.

46. The total amount of disbursements claimed by the College is \$3,610.13. The amounts claimed were expenses incurred by the College in conducting the hearing, which the College submits are reasonable and necessary as required by the tariff. These disbursements include:
- a. charges by counsel for the College for disbursements, in the amount of \$1,993.23; and
 - b. fees paid for court reporter and video-conferencing services on December 15, 2021 and February 22, 2022, in the amount of \$1,616.90.
47. 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).
48. The College submits that absent any information from the Respondent about a timeline or ability to pay, it is suggested that the Panel order that the costs be paid in full 90 days from the date of the Panel's order. The Panel agrees.
49. On April 24, 2023, following the close of the schedule for exchange of submissions on penalty and costs, the College received two emails from the Respondent's mother. The first email indicates that the Respondent's mother is willing to pay "the cost of the penalty". The second email indicates that the Respondent's mother would do so on condition of receipt of evidence that the Respondent is working towards "getting back her RMT license." The Panel notes that the timing and content of the emails confirm that the Respondent did receive the Conduct Decision as well as the College's position on penalty and costs. The emails received do not affect the Panel's analysis. They are neither evidence that the Respondent cannot pay nor evidence that she can pay the costs which were claimed by the College and ultimately ordered by the Panel.

D. ORDER

50. The Panel orders:
- a. a reprimand against the Respondent pursuant to section 39(2)(a) of the HPA;

- b. the Respondent is suspended for three months, to be served commencing the date of the Respondent's reinstatement in the event that she successfully applies for registration with the College in the future; and
- c. that the Respondent pay costs and disbursements in the amount of \$7,110.13 pursuant to section 39(5) of the HPA, which shall be payable within 90 days of the date of the Panel's order.

Notice of Right to Appeal

- 51. 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

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

Dated: June 14, 2023



Deborah Charrois, Chair



Arnold Abramson



Michael Wiebe