

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:

The College of Massage Therapists of British Columbia

(the "College")

AND:

Anuraj (Anu) Gill, RMT

(the "Respondent")

**REASONS FOR DECISION
(Penalty and Costs)**

Date and Place of Hearing: By written submissions

Discipline Committee Panel: Michael Wiebe, RMT, Chair
Jennifer Lie, RMT
Nicholas Aubin

Counsel for the College: Miriam Isman

The Respondent: Did not appear

Independent Counsel for the Panel: Susan Precious

Introduction

1. This panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia conducted a discipline hearing on January 29, 2019 and April 30, 2019 to consider pursuant to section 39 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or “HPA”), whether Anuraj (Anu) Gill, RMT (“Mr. Gill” or the “Respondent”) failed to comply with the *Code of Ethics*, whether he failed to comply with the Act, and whether he committed professional misconduct or unprofessional conduct.
2. The Panel issued its order and written reasons on May 13, 2019, in which it made the following findings:
 - a. Mr. Gill failed to reply to communications from CMTBC in a timely or responsive manner, or at all, regarding his Standard First Aid/CPR-C certification and his non-responsiveness to requests from CMTBC for information about the same; and
 - b. Mr. Gill did not comply with a standard imposed under the Act and committed unprofessional conduct pursuant to section 39(1) of the Act.
3. The Panel’s May 13, 2019 decision set a schedule for exchange of written submissions regarding penalty and costs.
4. The Panel received written submissions on penalty and costs from the College on June 13, 2019. Mr. Gill did not provide written submissions, though he was invited to do so by July 15, 2019.
5. For the reasons that follow, the Panel orders that:
 - a. Mr. Gill is reprimanded;
 - b. Mr. Gill is suspended for three months commencing from the date of this order;
 - c. Mr. Gill is prohibited from seeking reinstatement of his registration with the College pursuant to section 39(2)(b) of the HPA for the later of
 - (a) completion of his three-month suspension, or

(b) delivery to the College of written responses to the following outstanding questions:

i. Why were you unable to obtain valid SFA/CPR-C re-certification until April 25, 2018?

ii. When did you complete the training for the valid SFA/CPR-C certification that you held on and after October 26, 2011?

d. Mr. Gill shall pay the College costs pursuant to section 39(5) of the HPA in the amount of \$9,750.22 within three months of the date of this order.

6. The Panel directs the Registrar to publish notification of the disposition pursuant to section 39.3 of the HPA.

Legal Framework

7. The Panel's authority to impose penalties is set out in section 39(2) of the HPA. Having made a determination under section 39(1) of the HPA that Mr. Gill did not comply with a standard imposed under the Act and committed unprofessional conduct, the Panel may 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).

8. Sections 39(5) and (7) permit the Panel to award costs to the College as follows:

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.

9. Section 39(8) of the HPA permits the imposition of conditions on the lifting of a suspension or the eligibility to apply for reinstatement of registration:

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

(c) 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.

The parties' positions

10. The College seeks the following orders:

a. a reprimand pursuant to s. 39(2)(a) of the HPA;

b. an order prohibiting the Respondent from seeking reinstatement of his registration with the College pursuant to s. 39(2)(b) of the HPA for the later of (a) three months, or (b) delivery to the College of written responses to the following outstanding questions:

i. Why were you unable to obtain valid SFA/CPR-C re-certification until April 25,2018?

ii. When did you complete the training for the valid SFA/CPR-C certification that you held on and after October 26,2011?

c. an order that the Respondent pay a fine in the amount of \$5,000 pursuant to s. 39(2)(f) of the HPA;

- d. an order directing the Respondent to pay costs pursuant to s. 39(5) of the HPA; and
- e. a direction that the Registrar publish notification of the disposition pursuant to s. 39.3 of the HPA.

11. As mentioned above, Mr. Gill did not make any submissions with respect to penalty or costs.

Jurisdiction

12. Mr. Gill is no longer a registrant of the College. The Affidavit of Kate Parisotto sworn June 12, 2019 was delivered as part of the College's written materials with respect to penalty and costs. Ms. Parisotto's Affidavit states that the Respondent ceased to be a registrant on February 1, 2019, after he failed to renew his registration.
13. The College has identified a potential issue of jurisdiction with respect to one of the sanctions it seeks: an order prohibiting the Respondent from seeking reinstatement of his registration with the College for a set amount of time. The College submits that it seeks this order because although a suspension is generally appropriate in this type of case where the respondent is a current registrant, it submits a restriction on one's ability to apply for reinstatement is more suitable in a case involving a former registrant.
14. The College raised this issue because, there is a prior decision of the discipline committee of the College that held that this remedy is not available in a case against a former registrant: namely, *The College of Massage Therapists of British Columbia v. Martin* 2015 CMTBC 01. In *Martin*, a panel of the discipline committee of the College found that Mr. Martin committed, among other things, professional misconduct. Subsequently, Mr. Martin resigned from the College and became a "former registrant". The panel explained that, had Mr. Martin not resigned prior to the issuance of its order on penalty, it would have been prepared to, among other things, cancel his registration, and impose a condition that he be ineligible to apply for reinstatement of registration until at least two years had passed. However, given Mr. Martin's resignation, the panel concluded that it was no longer open to it to make

those orders. In reaching that conclusion, the panel noted the language of section 39(8) which grants the discipline committee the power to impose conditions on registrant's eligibility to apply for reinstatement of registration if the respondent has been suspended or cancelled. The panel found those provisions provide "an additional degree of public protection that is unavailable where, as in this case, a registrant has allowed his or her registration to lapse prior to a hearing. There would appear to be no principled reason for this discrepancy."

15. A similar outcome was reached in *The College of Registered Nurses of British Columbia v. Tinkham*, November 7, 2017.
16. The College submits that the *Martin* and *Tinkham* cases are anomalous, and that the Panel does in fact have jurisdiction to make the order sought pursuant to s. 39 the HPA (or any other order it sees fit). This is because, in order to fulfil its mandate of protecting the public, the Panel can and should be able to make any order against a former registrant as it could against a current registrant.
17. The College relies upon the more recent decision of *The College of Registered Psychiatric Nurses of B.C. v. Hurlston*, October 31, 2017 where the discipline committee panel considered whether it could impose reinstatement terms for a lapsed registrant who had not first been suspended:

We queried how the discipline committee could set a date for a registrant to apply for reinstatement, unless first suspended under section 39(2)(c). As a lapsed registrant, Ms. Hurlston has no registration to suspend. Mr. Kondopulos submitted that our authority to set a date for Ms. Hurlston to apply for reinstatement must be inferred from the broad language found in section 39(2)(b) of the Act. That subsection permits a discipline committee to impose limits or conditions on a registrant's practice. He argued that the Legislature could not have intended to allow a lapsed registrant to avoid the delayed return to practice provision which is applicable to an active registrant who is subject to a suspension order. Mr. Kondopulos argued that such a result would be absurd.

18. The panel ordered that Ms. Hurlson may not apply for reinstatement with the College until a specified period of time had passed, and that, if she did decide to apply for reinstatement, that she would be subject to all of the usual requirements and conditions applicable for reinstatement of her registration.

19. The College also submits that notwithstanding Mr. Gill's status as a "former registrant", the Panel may still make orders respecting penalty, publication and costs in this case. It relies upon the following provisions of the HPA:
- section 26 of the HPA defines the term "registrant" to include "a former registrant" for the purposes of Part 3 of the HPA, which relates to inspections, inquiries, and discipline, and includes the sections described below;
 - section 37 of the HPA provides that, if the registrar is so directed by the inquiry committee or the board, he or she must issue a citation that, among other things, "names the affected registrant as respondent" [emphasis added];
 - section 39 of the HPA grants the discipline committee with authority to make various orders against a respondent after a determination has been made, and order costs against the respondent; and
 - section 39.3 of the HPA, regarding public notification, states that a notification required under this provision must include the name of the "registrant".
20. The College relies upon the Supreme Court of Canada's comments in *Pharmascience Inc. v. Binet*, 2006 SCC 48 that regulatory bodies play an important role in public protection to argue that the Panel must be able to make the same types of orders against current and former registrants of the College.
21. The College relies upon *The College of Dental Surgeons of British Columbia v. Jobanputra*, 2014-CDSBC-01(A) in which a former registrant committed professional misconduct and unprofessional conduct. The discipline committee panel in that case held that "cancellation of Dr. Jobanputra's license [was] required to protect the public and to send a message to him and others that the CDSBC will not tolerate such serious misconduct". The Panel also held that Dr. Jobanputra could not apply for reinstatement for over 2 years after the date of its decision.
22. The College referred to *Law Society of British Columbia v. Power*, 2009 LSBC 23 in which the hearing panel found that "Although it may appear odd that a Panel may suspend or disbar a non-member, the *Act* requires that it be done if that is the appropriate penalty. When imposing a penalty appropriate to the circumstances, a

panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty”.

23. The College referred to *Law Society of British Columbia v. De Stefanis*, where a panel disbarred a lawyer who had previously been disbarred, and who was a former member at the time she was first disbarred.
24. The College also referenced the decision of *College of Nurses of Ontario v. Dumchin*, 2016 ONSC 626. In that case, the Ontario Superior Court of Justice found the discipline committee panel erred in concluding that it lacked the statutory power to order the revocation of a former member's registration. While the Panel recognizes that decision interpreted a different legislative framework than in this case, the Court's comments are nevertheless helpful:

[33] The [*Regulated Health Professions Act*] and the Code must be given a broad and purposive interpretation in keeping with the college's duty to act in the public interest. Interpretations that lead to absurd results and/or undermine the college's ability [to] carry out its duties are inconsistent with this legislative intent and are to be avoided ...

...

[41] Accordingly, in the context of professional regulation, a "certificate of registration" does not mean a piece of paper confirming one's membership in the profession. In this statutory context, a "certificate of registration" means the entitlement to practice in a regulated profession.

[42] The purpose of s. 14 is to ensure that a member cannot frustrate the disciplinary process by resigning unilaterally. The panel's interpretation not only limits but removes the college's important sanctioning powers which include suspension and the imposition of conditions as well as revocation. This would serve to encourage members to resign to avoid the consequences of their misconduct, whatever its nature. To allow such an interpretation to stand is antithetical to the overarching public protection purposes of the statutory disciplinary regime: ensuring that members are held accountable to their regulator for the prime objective of protection of the public.

25. The Panel agrees with the rationale above. The interpretation of the HPA should likewise be given a purposive approach having regard to the College's duty to protect the public. Interpretations that limit the College's sanctioning powers and encourage members to resign or allow their registration to lapse in order to avoid consequences are contrary to the purpose of the HPA. This is particularly the case, where the College's registration committee is required to process registration

applications and grant registration to individuals who meet the conditions and requirements under section 20(2) of the HPA.

26. The Panel finds, having regard to the words of the statute, their context, and the purpose of the HPA, that the HPA's reference to "registrant" and "respondent" in sections 37 to 39 includes a "former registrant". The Panel finds that it may order any of the penalties listed in section 39(2) against a former registrant, including a suspension.

Penalty considerations

27. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17, and have been cited many times, including in the *Law Society of British Columbia v. Dent* 2016 LSBC 05 decision referenced by the College. The factors are:

- a. the nature and gravity of the conduct proven;
- b. the age and experience of the member;
- c. the previous character of the member, including details of prior discipline;
- d. the impact upon the victim;
- e. the advantage gained, or to be gained, by the member;
- f. the number of times the offending conduct occurred;
- g. whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
- h. the possibility of remediating or rehabilitating the member;
- i. the impact on the member of criminal or other sanctions or penalties;
- j. the impact of the proposed penalty on the respondent;
- k. the need for specific and general deterrence;

- l. the need to ensure the public's confidence in the integrity of the profession; and
 - m. the range of penalties imposed in similar cases.
28. It is not necessary to consider every factor from the *Ogilvie* decision in each case.

Nature and gravity of the conduct proven

29. In its May 13, 2019 decision, the Panel found that Mr. Gill failed to cooperate with the College in responding to its communications in a responsive and timely manner. The Panel found that failing to cooperate with the College over the course of approximately one year, Mr. Gill impeded the College's statutory obligation to regulate the profession. The Panel found that the citation was proven on a balance of probabilities and that Mr. Gill committed unprofessional conduct pursuant to section 39(1)(c).
30. The College submits that the conduct is similar to the conduct in several cases it cited and relies on the decision of *The College of Registered Nurses of British Columbia v. Cunningham*. In *Cunningham*, a panel of the Discipline Committee of the College of Registered Nurses of British Columbia held that Ms. Cunningham failed to respond to various communications from the College, and also failed to acknowledge that she had received them, notwithstanding the College's requests for her to confirm receipt. The panel found that amounted to professional misconduct.
31. The College submits that in considering the appropriate penalty, the panel noted that Ms. Cunningham had been practicing for 35 years, had been through the College's investigation process, provided no explanation for her failure to cooperate, and provided no evidence concerning mitigating factors. The panel further noted that the Respondent had continued her failure to respond to the College's communications and, through that failure, was continuing to impede its investigation. The panel found that the three-month suspension imposed in a similar case was appropriate, but noted that, in lieu of an additional fine, they would structure the order to deter Ms. Cunningham from continuing her failure to respond.

The panel therefore ordered that Ms. Cunningham be suspended until the later of the following two events: (a) the expiry of a three-month suspension period; and (b) Ms. Cunningham delivering a substantive written response to the outstanding requests. The Panel also ordered Ms. Cunningham to pay costs to the College and directed the registrar to notify the public of its order.

32. The Panel finds the nature and gravity of Mr. Gill's conduct to be serious. The Panel finds this factor favours a more serious penalty.

Character and previous discipline of member

33. The College points out that Mr. Gill was a registrant with the College for the following periods of time:

- a. March 6, 1998 to February 11, 2002, when his registration lapsed for reasons including nonpayment of dues;
- b. April 8, 2002 to January 1, 2004, when he was suspended for failure to pay fines and fees owing to the College; and
- c. approximately April 1, 2011 to February 1, 2019, when he failed to renew his registration.

34. The College submits that Mr. Gill has sufficient experience to know that his conduct was below the expected standards of professional conduct.

35. The College also points out that Mr. Gill has been subject of prior action.

36. On June 17, 2003, the Inquiry Committee of the College directed the Registrar to issue a Citation and Notice of Hearing to Mr. Gill alleging that he committed professional misconduct for (i) failing to obtain insurance for a specified period of time, and (ii) responding to a letter from the Inquiry Committee with information that he knew or ought to have known amounted to a false or misleading statement. Mr. Gill admitted that he engaged in the alleged wrongful conduct, and the matter proceeded to a hearing before a panel of the Discipline Committee with respect to sentencing.

37. On October 8, 2003, the Discipline Committee ordered that Mr. Gill be required to pay a fine in the amount of \$5,000 and pay all direct costs of the disciplinary hearing by December 31, 2003.
38. Mr. Gill failed to pay the full amounts owing to the College by the deadline and was suspended.
39. The College submits that Mr. Gill's prior should be considered by the Panel pursuant to section 39.2 of the HPA:

39.2 (1) Before taking any action respecting a registrant under the following provisions, the registrar, inquiry committee or discipline committee may consider any action previously taken under Part 3 respecting the registrant:

- (a) in the case of the registrar or the inquiry committee, section 32, 32.2 or 32.3;
- (b) in the case of the inquiry committee, section 33 or sections 35 to 37.1;
- (c) in the case of the discipline committee, section 38 (8), 39 (2), (5), (8) or (9) or 39.1 (1).

40. The Panel agrees that it may consider Mr. Gill's past conduct and, in this case, exercises its discretion to do so. Mr. Gill's prior conduct of providing a false or misleading statement to the College, his failure to pay amounts owing to the College, and suspension are serious. The Panel finds Mr. Gill's past conduct is a factor that favours a more serious penalty.

Acknowledgement of misconduct, steps taken to redress wrong and other mitigating circumstances

41. The College submits that if a respondent is receptive to remediation or rehabilitation, this may mitigate the penalty imposed. However, in this case, it argues that Mr. Gill has not demonstrated any recognition or insight into his behaviour.
42. The College acknowledges that Mr. Gill provided partial responses to some of his outstanding requests during the course of the hearing. However, several requests remain outstanding. The College also submits that Mr. Gill did not cooperate with the College during the discipline process. In particular, he did not provide the College with notice that he would be testifying, or of his anticipated evidence, in

advance of the hearing. Additionally, the College submits that he did not participate in the second day of the discipline committee hearing, which took place on April 30, 2019, despite having confirmed his availability for that day.

43. The Panel finds that Mr. Gill did not fully acknowledge his misconduct and several requests from the College continue to remain outstanding. The Panel finds this to be a factor in favour of a more serious penalty.

The need for specific and general deterrence

44. The College submits that Mr. Gill's prior conduct, like the conduct in this proceeding, interfered with the College's ability to regulate the profession and therefore demonstrates the strong need for specific deterrence.
45. The College also submits that there is a need for general deterrence in this case.
46. The Panel finds there is a need for both specific and general deterrence in this case. Mr. Gill has a history of conduct with the College which has interfered with its ability to regulate the profession. A message of general deterrence should be sent to the profession. While the Panel has considered these factors, it accords them less weight than the other factors discussed.

Public Confidence in the Profession

47. The College submits that Mr. Gill's conduct harms the standing of the profession by undermining the College's ability to perform its statutory mandate. The College points to the Panel's May 13, 2019 decision which found that registrants have a duty to cooperate with the College, and which requires them to respond to communications in a responsive and timely manner. The College relies upon the following passage in *Cunningham*, the "rationale behind this principle is that a governing body must be able to rely on the cooperation of members to effectively regulate the profession". The College submits that the penalty in this case should demonstrate to the profession the seriousness with which the College treats the duty to cooperate and deter others from similar conduct.

48. The Panel agrees that a central purpose of disciplinary proceedings is to protect the public and ensure public confidence in the profession. The public must have confidence that members of the profession will cooperate with their regulators and will be held to account when they fail to do so. The Panel finds this factor favours a more serious penalty.
49. The Panel has weighed the *Ogilvie* factors and finds that the nature and gravity of the conduct proven, the character and previous discipline of Mr. Gill, the lack of acknowledgement of misconduct and other mitigating factors, and the need for public confidence in the profession weigh in favour of a more serious penalty in this case. The Panel finds that a reprimand, a suspension of three months commencing from the date of this order; a prohibition on seeking reinstatement of registration with the College pursuant to section 39(2)(b) of the HPA for the later of (a) completion of the three-month suspension, or (b) delivery to the College of written responses to the outstanding questions, and payment of costs is the appropriate penalty in the circumstances.
50. While the College also sought an order for a fine, the Panel does not find it appropriate to order a fine given the other penalties it has ordered, in particular the suspension.
51. The College has sought costs in the total amount of \$9,750.22. The College has provided affidavit evidence that the amounts claimed for legal representation are \$3,250, representing less than 50% of the College's actual costs for legal representation. The College has claimed \$6500.22 in disbursements for the expenses incurred by the College in conducting the hearing. The College has sought an order that those amounts are payable by December 31, 2019. The Panel finds those amounts to be reasonable and in accordance with the tariff. The Panel orders the costs to be payable within three months of the date of this order.

Order

52. This Panel orders that:

- a. Mr. Gill is reprimanded;
- b. Mr. Gill is suspended for three months commencing from the date of this order;
- c. Mr. Gill is prohibited from seeking reinstatement of his registration with the College pursuant to section 39(2)(b) of the HPA for the later of
 - (a) completion of his three-month suspension, or
 - (b) delivery to the College of written responses to the following outstanding questions:
 - i. Why were you unable to obtain valid SFA/CPR-C re-certification until April 25, 2018?
 - ii. When did you complete the training for the valid SFA/CPR-C certification that you held on and after October 26, 2011?
- d. Mr. Gill shall pay the College costs pursuant to section 39(5) of the HPA in the amount of \$9,750.22 within three months of the date of this order.

53. The Panel directs the Registrar to publish notification of the disposition pursuant to section 39.3 of the HPA.

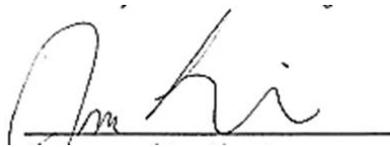
Notice of right to appeal

54. 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.

Date: October 31, 2019



Michael Wiebe, RMT, Chair



Jennifer Lie, RMT



Nicholas Aubin