

IN THE MATTER OF A HEARING BY THE DISCIPLINE COMMITTEE OF THE BRITISH
COLUMBIA COLLEGE OF ORAL HEALTH PROFESSIONALS PURSUANT TO THE
HEALTH PROFESSIONS ACT, RSBC 1996 c. 183

BETWEEN:

THE BRITISH COLUMBIA COLLEGE OF ORAL HEALTH PROFESSIONALS

AND:

PAUL BIDDLE

DECISION OF THE DISCIPLINE PANEL ON PENALTY AND COSTS

Hearing Date:	by written submissions
Discipline Committee Panel:	Carol Williams, Chair Isabelle Gauthier Dr. Brendan Matthews
Counsel for the College:	Nazio Filice
Paul Biddle:	no written submissions from the Respondent
Independent Counsel for the Panel:	Amy M. Nathanson

A. INTRODUCTION

1. A panel of the Discipline Committee (the **Panel**) of the British Columbia College of Oral Health Professionals (the **College**) conducted a hearing on July 10, 2024, to determine the allegations set out in the amended citation dated May 31, 2024 (the **Amended Citation**).
2. On November 13, 2024, the Panel issued written reasons (the **Conduct Decision**) setting out its determination that the Respondent engaged in unprofessional conduct by failing to respond to the College's communications concerning the complaints made against him (the **Complaints**) and failing to provide the College with his updated contact information.

3. The Panel emailed the Conduct Decision to the parties on November 15, 2024, and directed the College to send a copy to the Respondent by registered mail. On November 25, 2024, the College sought directions from the Panel as it was unable to send the Conduct Decision to the Respondent by registered mail due to the Canada Post strike. The College proposed using a private courier who would provide proof of delivery (although a signature confirming receipt would not be required). The Panel agreed to this method of service.
4. The College provided a status update from Novex Delivery Solutions confirming the Conduct Decision was delivered to the Registrant on December 11, 2024.
5. In the Conduct Decision, the Panel set out a schedule for the parties to provide written submissions on penalty and costs. In accordance with the proscribed schedule, the College provided its written submissions to the Panel and the Respondent by email on December 12, 2024. The Respondent was to deliver his written submissions by January 16, 2025, but did not do so. To date, the Respondent still has not delivered any submissions or sought an extension of time to do so.
6. The Panel finds that the Respondent received a copy of the Conduct Decision by email and by courier and therefore had sufficient notice of his opportunity to provide submissions on penalty and costs. The Respondent also received a copy of the College's written submissions, so he had notice of the orders sought by the College and chose not to provide submissions in response.
7. As a result, the Panel has decided to proceed with making its decision on penalty and costs, despite not receiving submissions from the Respondent (see s. 38(5) of the *HPA*).

B. LEGAL FRAMEWORK FOR DETERMINING PENALTY AND COSTS

General Approach for Assessing Penalty

8. Under section 39(2) of the *HPA*, if a determination is made under subsection 39(1), the Discipline Committee may make orders respecting penalty:

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 of a registrant's registration, section 39(8) of the *HPA* also applies:
- 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.
10. In exercising its discretion to determine the appropriate penalty, the Panel may consider all relevant circumstances, including any aggravating or mitigating factors.
11. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17 [*Ogilvie*]:
- (a) The nature and gravity of the conduct proven;
 - (b) The age and experience of the respondent;

- (c) The previous character of the respondent, including details of prior discipline;
- (d) The impact upon the victim;
- (e) The advantage gained, or to be gained, by the respondent;
- (f) The number of times the offending conduct occurred;
- (g) Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;
- (h) The possibility of remediating or rehabilitating the respondent;
- (i) The impact on the respondent 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.

12. In *Edward Dent (Re)*, 2016, LSBC 5 (***Dent***) a hearing panel of the Law Society of B.C. found that it is not necessary to consider all of the *Ogilvie* factors in every case and distilled these factors into four general categories:

(i) *The nature, gravity and consequences of the conduct*

This category includes consideration of the severity of the misconduct, how long it lasted, how many times it occurred, how the misconduct impacted the victim, and whether there was any financial gain from the misconduct.

(ii) *Character and professional conduct record of the respondent*

This category includes consideration of the age and experience of the respondent, their reputation in the community and the profession, and their professional conduct record.

(iii) *Acknowledgement of the misconduct and remedial action*

This category includes consideration of whether the respondent has admitted the misconduct and taken steps to prevent a re-occurrence, whether the respondent

can be rehabilitated, and mitigating circumstances such as mental health issues or addiction.

(iv) *Public confidence in the legal profession including public confidence in the disciplinary process*

This category includes consideration of whether there is sufficient general and specific deterrent value in the proposed disciplinary action, whether the public will have confidence that the proposed action is sufficient to maintain the integrity of the profession and whether the public will have confidence in the proposed penalty compared to penalties in similar cases.

13. Other professional regulatory tribunals, including those regulating professions under the *HPA*, have applied the factors in *Ogilvie* and *Dent*. See: *College of Registered Nurses of British Columbia v. Cunningham*, 2017 BCCNM 4 (**Cunningham**) and *College of Massage Therapists of British Columbia and Steven Anderson*, October 20, 2022, (**Anderson**).
14. The objectives to be kept in mind when determining appropriate measures under section 39(2) of the *HPA* include: the need for specific deterrence of the respondent, general deterrence of other registrants, educating registrants and the public about professional standards, and promoting public confidence in the profession and its ability to self-regulate (see *Cunningham* at para 19).
15. Ultimately, a penalty must fall within a reasonable range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation (see *Cunningham* at para 20).

C. SUBMISSIONS OF THE COLLEGE

16. The College organized its submissions in accordance with what it submits are the most relevant *Ogilvie/Dent* factors to consider.

(i) *nature, gravity and consequences of the conduct*

17. The College submitted that it sent the Respondent 13 letters and attempted to reach him by phone 15 times in a 10-month period and that the Respondent's four communications in response were not full or substantive responses to the College's requests.
18. The College submitted that the Respondent's continued failure to respond has left it unable to proceed with its investigation into the Complaints, and has left the complainants with no resolution. The College also submitted that the Respondent's conduct is serious because it has left the College unable to properly regulate in the public interest or to protect the public.
19. As a result, relying on *Cunningham*, the College submitted that any order should be structured to deter the Respondent from continuing his failure to respond to the College regarding the Complaints.

(ii) *acknowledgement of the misconduct and remedial action*

20. The College submitted that the Respondent has not acknowledged any misconduct or taken any remedial action. It also emphasized that the Respondent also did not attend the Hearing or provide any submissions on penalty or costs.

(iii) *specific deterrence, general deterrence and public confidence in the complaints process*

21. Regarding specific deterrence, the College submitted that the evidence points to a Registrant who has demonstrated an unwillingness to cooperate with the College and an inability to be governed by the College.
22. The College submitted that the penalty should address the seriousness of a failure to respond to the College and should ensure that other registrants understand the importance of responding to the College and fully cooperating in complaint investigations.
23. The College also submitted that the Respondent's failure to respond to the College has a serious impact on the public's confidence in its discipline process and that a fair and appropriate penalty would confirm that the Respondent's conduct fell markedly below what is required of a registrant.

(iv) *character and professional conduct record*

24. Section 39.2 of the *HPA* provides that the Panel may consider any previous action taken against the Respondent under Part 3 of the *HPA*. The relevant portions of section s. 39.2 are set out below:

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:

...

- (c) in the case of the discipline committee, section 38 (8), 39 (2), (5), (8) or (9) or 39.1 (1).

- (2) The registrar, inquiry committee or discipline committee may, in applying subsection (1), consider

- (a) any action under Part 3 respecting the registrant that occurred or was recorded before the coming into force of this section, or
- (b) any action, similar to an action that may be taken under Part 3, that was taken by the governing body for a health profession under a former enactment regulating the health profession.

25. In its written submissions, the College indicated that the Respondent had one professional conduct matter dating back to when he was a member of the Legacy College of Denturists of BC (**CDBC**). The College took no position on whether this matter should be considered by the Panel.

(v) *penalties in similar cases*

26. The College referred the Panel to several professional misconduct decisions involving a failure to cooperate with a professional regulator to assist the Panel in determining a fair and appropriate penalty.
27. The College relied primarily on *Cunningham*, where, after finding that the registrant had engaged in unprofessional conduct by failing to respond to the communications from the College of Registered Nurses of B.C.'s Inquiry Committee, a discipline panel suspended the registrant's registration until the later of three months or her delivering a substantive written response to the complaint and paying costs.

28. The College pointed out that at paragraph 15, *Cunningham* references a number of cases with similar facts where suspensions ranging from one to six months were imposed.
29. The College sought the following orders:
 - (a) An Order that the Respondent provide a full response to the Complaints;
 - (b) An Order that the Respondent's registration be suspended until the later of the following two events:
 - (i) The expiry of a three-month suspension period to commence should the Respondent become an active registrant with the College; and
 - (ii) The Respondent delivers, to the Inquiry Committee, a substantive written response concerning the Complaints, and the Registrar, as a delegate of the Panel, confirms that this condition has been met;
 - (c) An Order that the Respondent pay costs to the College in the amount of \$6,200.16, within three months of the date of the Panel's order; and
 - (d) An Order that there be public notification pursuant to s. 39.3 of the *HPA*.
30. Considering the penalties imposed in similar cases and the factors set out above, the College submitted that the penalties it was seeking were consistent, fair, would achieve the goals of denunciation and deterrence and ensure the public safety.
31. The College addressed the issue of whether the Panel has jurisdiction to suspend the Respondent when he is a former registrant of the College. The College relied on *Anderson*, where the discipline committee panel held that the discipline committee has the power to suspend or cancel the registration of a former member.
32. In *Anderson*, the discipline committee panel adopted the reasoning set out in *College of Massage Therapists of British Columbia v. Gill* 2019 CMTBC 1 (*Gill*) and *College of Massage Therapists of British Columbia v. Morgan* (June 8, 2021) [*Morgan*], that the interpretation of the *HPA* should be given a purposive approach and that interpretations that limit the College's sanctioning powers would encourage members to resign or allow their registration to lapse to avoid consequences from the College.
33. The panel in *Gill* found that having regard to the purpose of the *HPA* and the words in their context, the reference to "registrant" and "respondent" in sections 37-30 include a

“former registrant” and therefore the discipline committee may order any of the penalties listed in section 39(2) of the *HPA* against a former registrant, including suspension.

D. SUBMISSIONS OF THE RESPONDENT

34. As set out above, the Respondent did not provide any submissions on penalty or costs.

E. ANALYSIS AND REASONS FOR DECISION

35. The Panel agrees that the College’s approach of focusing on the most relevant *Ogilvie* factors to assess the appropriate penalty was the correct approach.

36. In considering the appropriate penalty for the Respondent, the Panel has taken into account the objectives of specific and general deterrence, educating registrants and the public about professional standards, and promoting public confidence in the College’s ability to self-regulate.

(i) nature, gravity and consequences of the conduct

37. The Panel finds that the Respondent’s failure to cooperate with the College’s investigation into the Complaints was serious. The Respondent failed to respond fully to the College or cooperate in its investigations in the Complaints, despite repeated correspondence from the College over the course of 10 months, reminding him of his obligation to do so.
38. The Panel found that the Respondent’s conduct was serious and ultimately amounted to professional misconduct. The fact that the Respondent’s continued failure to respond has prevented the College from proceeding with its investigation into the Complaints risks undermining public confidence in the College’s ability to regulate its members. It also harms the complainants whose complaints remain unresolved.
39. The Panel finds that this is an aggravating factor that supports the imposition of a more serious penalty.

(ii) acknowledgement of the misconduct and remedial action

40. The Panel finds that there is no evidence that the Respondent has acknowledged his misconduct or taken any remedial action. To the contrary, the Respondent’s failure to

participate in the Hearing or provide submissions on penalty suggests that the Respondent had no insight and has not learned from his behaviour.

41. The Respondent's failure to participate also means that he did not provide the Panel with any explanation for his conduct or provide evidence of any mitigating factors for the Panel to consider.
42. The absence of an admission or demonstrated remorse is not an aggravating factor but simply the absence of a mitigating factor (see *Anderson* at para 30).

(iii) Specific deterrence, general deterrence and public confidence

43. The Panel agrees that the penalty must address specific deterrence of the Respondent. It is evident from the Respondent's conduct in relation to the Amended Citation and the fact that this is the second time he has been involved in discipline proceedings as a result of his failure to respond to the College, that an appropriate penalty must be sufficient to deter similar conduct from the Respondent.
44. The Panel also finds that an appropriate penalty must address general deterrence and highlight for other registrants the importance of their obligation to cooperate with the College and the seriousness of failing to do so.
45. Finally, given the College's statutory duty to protect the public and to regulate in the public interest, it is important that the penalty serve to maintain the public's confidence in the College's discipline process and the College's ability to regulate registrants. The Panel finds that the imposition of a serious penalty in the face of repeated and deliberate conduct is necessary to protect the public and maintain its confidence in the profession (see *Anderson* at para 34).

(iv) professional conduct record of the Respondent

46. As set out above, section 39.2 of the *HPA* provides that the Panel may consider any previous action taken against the Respondent under Part 3 of the *HPA*.
47. The Panel requested details of the Respondent's previous professional conduct record referenced in the College's written submissions. The College provided the Panel and the

Respondent with a memo summarizing the Respondent's discipline history that attached a Statement of Agreed Facts and a Consent Resolution.

48. The Respondent was the subject of two previous complaints, which resulted in the CDBC issuing a single citation for a discipline hearing dated March 16, 2002 (the **Previous Citation**).
49. The nature of the two complaints are summarized below:
 - (a) On March 30, 2000, the Registrant entered into a consent agreement with the CDBC for advertising contrary to the Bylaws and failing to respond to the CDBC's requests for information.
 - (b) An insurance company submitted a complaint to the CDBC alleging that the Respondent submitted claims for partial dentures for two of his patients when he was not qualified to perform partial dentures.
50. After the Previous Citation was issued, the Respondent retained counsel and ultimately signed a statement of agreed facts and agreed to a consent resolution that included a reprimand for professional misconduct, payment of two fines, and payment of costs.
51. Although the College took no position on whether the Respondent's discipline history should be considered by the Panel, having reviewed and considered the Respondent's discipline history, the Panel has determined that it is relevant to its determination of the appropriate penalty.
52. The Panel notes that the Respondent dealt with the Previous Citation in a very different manner, which led to it being resolved without a hearing. In contrast, the Respondent has failed to engage with the College in relation to the Amended Citation, making it necessary to proceed to the Hearing.
53. The Panel finds it concerning that this is the second time that the Respondent has been involved in discipline proceedings for failing to respond to his regulator. The Respondent's failure to respond to the College regarding the Complaints and his failure to participate in the Hearing indicates that the penalty resulting from the Previous

Citation did not deter him from repeating his behaviour some 20 years later. This factor weighs in favour of a more severe penalty and specific deterrence for the Respondent.

(v) *penalties imposed in similar cases*

54. As noted by the College, the professional conduct cases it referred the Panel to are not binding on the Panel, but they do provide useful guidance by setting out the range of penalties in similar cases.
55. The Panel is satisfied, based on *Gill* and *Morgan*, that it has jurisdiction to suspend the Respondent even though he is a former registrant of the College. The Panel finds that it is appropriate to suspend the Respondent's registration and to structure the suspension in the manner proposed by the College (which is the same structure used in *Cunningham*).
56. Based on the range of suspensions in the cases the College referred to, and the cases summarized in *Cunningham*, the Panel finds that the three- month suspension sought by the College is reasonable in the circumstances.
57. The Panel declines to make the order sought by the College directing the Respondent to provide a fulsome response to the Complaints. However, the structure of the suspension ties it to the requirement that the Respondent provide a substantive response to the Complaints (that is satisfactory to the College).
58. Although the College did not seek the imposition of a fine, section 39(2)(f) of the *HPA* provides that the Panel may impose a fine in an amount not exceeding the maximum fine established under section 19(1)(w). Section 13.10 of the Bylaws provides that the maximum amount of fine that may be imposed by the Discipline Committee is \$50,000.
59. The Panel recognizes that fines and suspensions are generally seen as lying at opposite ends of the spectrum in terms of the seriousness of penalties (with suspensions being reserved for more serious cases) and therefore are typically alternate forms of penalties.
60. However, a panel may impose a fine in addition to a suspension "because it is necessary to further the principles which guide the disciplinary process." This may include circumstances where the misconduct has a financial character or there is a failure to cooperate with the College (see *Anderson* at para 59).

61. In *Anderson*, the panel imposed a fine in addition to a suspension, in part because as a former registrant, removal from the profession would not have the same impact it would for a practicing registrant. The panel found that in these circumstances, cancellation alone would not provide a sufficient deterrent or maintain public confidence in the profession and imposed a fine of \$10,000.
62. The Panel finds that it is necessary and appropriate in the circumstances to impose a fine on the Respondent in addition to suspending his registration. As noted in *Anderson*, as a former registrant, a suspension will not impact the Respondent in the same manner as if he were currently practicing. In addition, since the consequences from the Previous Citation (a reprimand, fines and costs) did not deter him from engaging in the same behaviour some 20 years later, the Panel is of the view that a suspension alone will not provide a sufficient deterrent for the Respondent.
63. The Panel imposes a fine in the amount of \$2,000, to be paid within three months of the date of the Panel's order.

E. COSTS

64. Subsection 39(5) of the *HPA* provides that if the discipline committee acts under subsection (2), it may award the College costs against the Respondent based on the tariff of costs established under section 19(1)(w.1). Pursuant to section 39(7) of the *HPA*, if costs are awarded under subsection (5) they must not exceed, in total, 50% of the actual costs to the College for legal representation for the purposes of the hearing.
65. Section 13.11(3) of the Bylaws establishes a tariff of costs for discipline hearings; the tariff is set out in Schedule I of the Bylaws (the **Tariff**).
66. The College claims 65 units under the Tariff at \$150 per unit, for a total of \$9,750.00 in legal fees. However, since the College did not retain external counsel for the Hearing and therefore cannot determine its actual costs for legal representation for the Hearing, it is only seeking recovery of half of the units claimed under the Tariff (32.5 units) reducing its claim for legal fees to \$4,875.00.

67. The College submits that it took reasonable steps to ensure the Hearing was conducted in a cost-effective manner, including by relying on affidavit evidence to reduce hearing time and that the costs sought are reasonable and not intended to be punitive to the Respondent.
68. The Tariff also provides for the recovery of reasonable disbursements. The College is seeking recovery of its disbursements in the amount of \$1,325.56. The invoices for the College's disbursements are attached to the Affidavit #2 of Angelina Simmons: (a) West Coast Process Serving - \$511.46; and (b) Charest Legal Solutions Inc. - \$813.70.
69. The Panel finds that an award of costs is warranted in this case. The College proved the allegations in the Amended Citation and the Respondent's failure to respond to the College regarding the Complaints was serious. The Respondent's failure to engage also made it necessary to proceed to the Hearing.
70. The Panel also finds the units claimed by the College under the Tariff are fair and reasonable. As the Tariff is only intended to partially indemnify parties for expenses incurred in the preparation and conduct of hearings, awarding the College half of the units claimed ensures that the costs award will not exceed 50% of its actual costs for the Hearing. The Panel also finds that the College's disbursements were reasonably incurred and should be reimbursed in full.
71. The Panel orders costs against the Respondent in the amount of \$6,200.16 (comprised of \$4,875.00 for legal fees and \$1,325.16 in disbursements) to be paid within three months of the date of the Panel's order.

D. ORDER

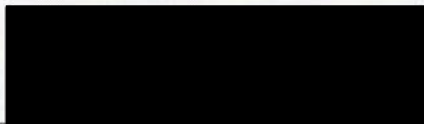
72. The Panel orders the following:
- (a) The Respondent's registration be suspended until the later of:
 - (i) The expiry of a three-month suspension period to commence should the Respondent become an active registrant with the College; and

- (ii) The Respondent delivering to the Inquiry Committee substantive written responses to the Complaints, and the Registrar, as a delegate of the Panel, confirms that this condition has been met;
 - (b) The Respondent must pay costs to the College in the amount of \$6,200.16, within three months of the date of the Panel's order; and
 - (c) The Respondent must pay a fine to the College in the amount of \$2,000 within three months of the date of the Panel's order.
73. The Panel also directs, pursuant to section 39.3(1)(d) of the *HPA*, that the Registrar notify the public of its order and that this notification include all of the information set out in section 39.3(2).

E. NOTICE OF RIGHT TO APPEAL

74. The Respondent is advised that under section 40(1) of the *HPA*, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the *HPA* may appeal the decision to the Supreme Court of British Columbia. Under section 40(2) of the *HPA*, an appeal must be commenced within 30 days after the date on which these Reasons are delivered to the Respondent.

Dated: June 16, 2025



Carol Williams, Chair



Isabelle Gauthier



Dr. Brendan Matthews